

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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AUG 16 2013

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

S.C. Supreme Court

WILLIE GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 201²~~B~~-213568

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	No. 07-GS-40-4012
County of Richland	)	07-GS-40-4013
	)	07-GS-40-4014
	)	07-GS-40-4015
)	)	
State of South Carolina,	)	
	)	
Plaintiff	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
Willie M. Green,	)	
	)	
Defendant	)	
	)	

July 31, 2008 and
April 30, 2009
Columbia, SC

BEFORE:

The Honorable J. Michelle Childs, Judge

APPEARANCES:

Margaret Fent, Assistant Solicitor,
Attorney for the Plaintiff

George McElveen, Esq.
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 WILLIE GREEN, after being duly sworn, testified
2 as follows:

3 THE COURT: Mr. Green, are you under the
4 influence of any alcohol, drugs, or medication?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Have you ever been evaluated for
7 your mental health?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Okay. These indictments are for
10 criminal sexual conduct, minor, second degree; incest
11 and criminal sexual conduct, third degree. I've
12 actually got two criminal sexual conduct, minor,
13 second degree. Do you understand that?

14 MR. McELVEEN: You might run it down again, Your
15 Honor.

16 THE COURT: Okay. One for incest, one for
17 criminal sexual conduct, third degree; and two
18 criminal sexual conducts with a minor, second degree;
19 is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: So you're pleading to all of those
22 today?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. Listen carefully about the
25 allegations indicating in Richland County, on or

1 between October 25th, 2000, to October 25th, 2003,
2 you willfully, unlawfully, and feloniously engaged in
3 a sexual battery against Minor 1 , who was at
4 least 14 years of age but less than 16. Do you
5 understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And how do you wish to plead?

8 THE DEFENDANT: Guilty, ma'am.

9 THE COURT: And then in Richland County on or
10 between January 1st, 2006 to January 18th, 2007, you
11 engaged in a sexual battery upon an Minor 3
12 without her consent. Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: How do you wish to plead?

15 THE DEFENDANT: Guilty, Your Honor.

16 THE COURT: In Richland County on or between
17 October 25th, 2000 to October 25th, 2003, you
18 willfully and unlawfully engaged in carnal
19 intercourse with your daughter, Minor 1 is
20 that correct?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. And then in Richland County
23 on or between January 1st, 2004, and November 15th,
24 2004, you willfully, unlawfully, and feloniously
25 engaged in a sexual battery against Minor 2 who

1 was 14 but less than 16. Do you agree with that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And how to you wish to plead?

4 THE DEFENDANT: Guilty, ma'am.

5 THE COURT: Okay. Listen to the State as they
6 give me further facts in support of the case, and
7 then I'll give you an opportunity to respond.

8 MS. FENT: Your Honor, the basic facts are that
9 the victim, Minor 2 had told her two sisters in
10 September of 2006 that the defendant, their father,
11 had been having sex with her. Another one of the
12 victims, Minor 1 said that it was also happening to
13 her.

14 The victims eventually told their mother in
15 January of 2007. The mother immediately got them out
16 of the home. They went to Sistercare, D.S.S. was
17 notified, and law enforcement was notified.

18 Law enforcement investigators got statements
19 from the three victims detailing the extent of the
20 sexual abuse. We got D.N.A. samples from the three
21 victims. Two of the victims had gotten pregnant as a
22 result of the sexual abuse.

23 One of the victims had conceived two children as
24 a result of this and another victim had conceived one
25 child as a result of this. We got D.N.A. samples

1 from those offspring.

2 The defendant was then charged. We got then the
3 defendant's D.N.A., and it positively showed that he
4 is the father of his grandchildren.

5 THE COURT: Okay.

6 MS. FENT: Basically, in terms of -- that's the
7 basic facts. His prior record is an '81 house
8 breaking, an '87 receiving stolen goods, a '93 D.U.S.
9 In '97, six counts of animal fighting, and a '96
10 simple possession of marijuana.

11 I do have other information I'd like to give the
12 court in terms of punishment, and I believe the
13 victims would also like to address the Court --

14 THE COURT: Okay.

15 MS. FENT: -- at the appropriate time.

16 THE COURT: Okay. First, Mr. Green, do you
17 agree with the facts that she has just stated to the
18 Court?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Is there anything you wish to
21 challenge?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Okay. Do you agree with your prior
24 record, as well?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. I'm happy to hear from anyone
2 else on your -- on behalf of the State.

3 MS. FENT: To make the record clear, Your Honor,
4 I believe that they are here on behalf of the
5 defendant, not on behalf of the State.

6 THE COURT: Okay. State your name for the
7 record.

8 Minor 1 Minor 1

9 THE COURT: All right.

10 Minor 1 Well, first of all, I love my
11 father very much, and I forgive him, I really do.
12 And for the past year, he has been mailing us, I
13 mean, his whole check. I mean, trying to make it
14 better.

15 I believe in my heart that he is a changed
16 person, Your Honor, and we're trying to work on our
17 family. We're trying to bring our family back
18 together, we are. I really, really, really don't
19 want him to do any time in jail. I mean...

20 THE COURT: Were you one of the ones who
21 conceived a child with him?

22 Minor 1 Yes, ma'am.

23 THE COURT: And how is your child doing and, you
24 know, the family unit with respect to dealing with
25 this situation?

1 Minor 1 We're all fine. We all -- we
2 got therapy. We all -- I mean, the children are
3 fine. Everybody is doing good.

4 MS. FENT: She conceived two children as a
5 result of this.

6 THE COURT: Okay. How do you deal with your
7 child's relationship with who is supposed to be the
8 father?

9 Minor 1 Well, I have a boyfriend now,
10 and we all -- you know, we play the role. The mom
11 and dad role or whatever.

12 THE COURT: And then how does Mr. Green fit in?

13 Minor 1 Huh?

14 THE COURT: How does Mr. Green fit in?

15 Minor 1 I mean, he mails us money. I
16 mean...

17 THE COURT: I'm talking about insofar as the
18 child. In terms of what does the child understand
19 him to be?

20 Minor 1 Grandfather.

21 THE COURT: Okay. Okay. Anything else?

22 Minor 1 I just really, really don't want
23 to break up our family between all of this. I didn't
24 even want all of this to get out. They were telling
25 us that we had to do it.

1 THE COURT: Do you understand that that is
2 crime?

3 Minor 1 Yeah, I know. I understand.

4 THE COURT: Okay. So that's -- it's not
5 somebody badgering you or forcing you. This is a
6 crime.

7 Minor 1 Yeah. I didn't --

8 THE COURT: I need you -- I need to understand
9 whether or not you understand that.

10 Minor 1 Oh, I understand.

11 THE COURT: Okay. So did you understand that
12 what has happened to you is not natural, and that
13 it's actually an illegal act?

14 Minor 1 Yes, ma'am, I understand that.

15 THE COURT: Okay. Okay. That's okay. I'm not
16 trying to cut you off. It's just that you're saying
17 everything is fine. You didn't want it to get out.

18 Minor 1 Uh-huh.

19 THE COURT: And you're making it as if the State
20 or law enforcement has done something wrong. He is
21 here to stand for these charges.

22 Minor 1 Yeah, but...

23 THE COURT: And they are here to protect you,
24 just as I am.

25 Minor 1 But when we left, I was told

1 that just by leaving, leaving the situation.

2 THE COURT: Okay. I understand that. And how
3 long did this -- well, it -- obviously, the
4 indictment -- you agree that it went on for the
5 period of time that you indicate?

6 Minor 1 Yes, ma'am.

7 THE COURT: Okay. And that you were of that
8 youthful age at that time, as well?

9 Minor 1 Yes, ma'am.

10 THE COURT: Okay. All right. Thank you.

11 Minor 1 You're welcome.

12 THE COURT: Okay. Next?

13 Minor 2 My name is Minor 2

14 THE COURT: Excuse me?

15 Minor 2 My name is Minor 2

16 THE COURT: Okay. Minor 2 And your last name?

17 Minor 2 Boyd.

18 THE COURT: Okay.

19 Minor 2 Basically, like the same thing she
20 just said. I know it's wrong and stuff, but I
21 forgive him, and I really love him being that he
22 raised me all these years and stuff; that my mom told
23 me that he wasn't really my father, but he raised me
24 all these years.

25 THE COURT: Okay.

1 Minor 2 And he always loved me. He always
2 has been there. He always had my back. I know what
3 he did was a crime. I'm not saying that it's right.
4 I really don't want him to go. I really don't want
5 him to do serious time.

6 THE COURT: Did you conceive a child with him?

7 Minor 2 Yes, ma'am.

8 THE COURT: One child?

9 Minor 2 Yes, ma'am.

10 THE COURT: How old are these children right
11 now?

12 Minor 2 My little girl is one.

13 THE COURT: Okay. And your sister's child --
14 children, Ms. Boyd, Minor 1

15 MS. FENT: One was born in December of 2001, and
16 another one was born in December of 2003.

17 THE COURT: So approximately seven and five?

18 Minor 2 Yes, ma'am.

19 THE COURT: And what is your child's
20 relationship with a father or male figure? What does
21 your child understand?

22 Minor 2 I mean, I have a boyfriend, too.
23 I stay in Blythewood with him. Well, something like
24 mother, father, something like that, but yeah, he
25 mails money and stuff, his check.

1 THE COURT: Okay. Do you think that you are
2 somewhat swayed by the fact that he's mailing money
3 to you, and that he's participating in caring for the
4 child?

5 Minor 2 Yeah, I really appreciate that.

6 THE COURT: Okay. But are you dependant on that
7 such that your judgment is skewed based on the fact
8 that you're getting financial help?

9 Minor 2 Well, to be honest, I really don't
10 like want him in the life of the -- the child's life
11 like that, being that what happened, because I'm fine
12 about me and my boyfriend raising this little girl.

13 THE COURT: And then what does your child
14 understand Mr. Green to be?

15 Minor 2 Well, being that she never saw him
16 or anything, so I don't know what...

17 THE COURT: She hadn't seen him?

18 Minor 2 No.

19 THE COURT: Okay. Where does he stay in
20 relationship to where you all stay?

21 Minor 2 I stay in Blythewood with my
22 boyfriend.

23 THE COURT: Okay. And then your sister,
24 Minor 1 stays where?

25 Minor 2 My mom.

1 THE COURT: And your mother lives where?

2 Minor 2 : In Columbia.

3 THE COURT: Okay. Thank you.

4 Anything further from the State at this time?

5 MS. FENT: Yes, Your Honor. First, I'd like

6 to --

7 (pause)

8 THE COURT: State your name for the record.

9 Minor 3 My name is Minor 3

10 THE COURT: And what's your last name?

11 Minor 3

12 THE COURT: Okay. Go ahead.

13 Minor 3 Well, I really love my father,

14 and I really don't want him to go to jail either.

15 I'm thinking of when he raised me and stuff, he took

16 good care.

17 I just -- I just had my mama and stuff, and I
18 don't want anything bad to happen to him, because I
19 still feel in my heart that I love him no matter what
20 happened.

21 THE COURT: Okay. Thank you.

22 Minor 3 You're welcome.

23 THE COURT: Now, were you one of the victims, as
24 well?

25 Minor 3 Yes.

1 THE COURT: Okay. Did you conceive a child with
2 him?

3 Minor 3 No, ma'am.

4 THE COURT: Okay. Thank you.

5 Minor 3 You're welcome.

6 THE COURT: All right.

7 GINA BOYD: My name is Gina Boyd.

8 THE COURT: All right. What is your first name?

9 GINA BOYD: Gina. I'm the mother of all the
10 victims, and I must say that when I found out, it was
11 hard, but it's only through God that, you know, we
12 can get through right now.

13 And it took a lot for -- to forgive him for what
14 he did, but we have. You know, it's just -- it's
15 hard because -- you know, it's like if you would
16 have -- if you would have known him, you know, you
17 would not even believe this. It's just how much of a
18 person he is.

19 I believe that God put him here for a reason.
20 You know, that's why we're all here today. I could
21 have been standing here by myself. It could have
22 went all kind of ways.

23 It's only by the Lord that we're all here, and I
24 think that he deserves a second try at life. Because
25 I do believe God has a purpose for him, and it was

1 the hardest thing in my life to forgive him, but I
2 had to. My children have, as well. I just ask that
3 you show mercy, Your Honor.

4 THE COURT: Thank you.

5 GINA BOYD: For his children's sake, because
6 they do still love him. They have had counseling and
7 we're coping. We're doing well.

8 They would be hurt if something were to happen
9 to him, even though they went through this. It would
10 hurt them to see something happen to him.

11 When I told the kids that he had -- he had been
12 arrested when I was notified, they were so irate, so
13 just uncontrollable, you know, they were so
14 emotional. That's how much they love their -- their
15 father.

16 I know it's very bad, but if you know -- you
17 know, God puts the worst on the best, the courageous
18 ones. That's all I have to say, Your Honor. Show
19 mercy. I forgive him.

20 THE COURT: Thank you.

21 GINA BOYD: The Lord forgives him.

22 THE COURT: Okay. And you understand that
23 you're their mother, so you're there to protect them,
24 as well?

25 GINA BOYD: Yes, ma'am. That's what I did as

1 soon as I found out.

2 THE COURT: By having him move and leave.

3 GINA BOYD: Ma'am?

4 THE COURT: By having him move and leave --

5 GINA BOYD: We left.

6 THE COURT: Okay. But I'm concerned about him
7 fathering three children, so that means that your
8 daughters, one pregnant twice, one pregnant one more
9 time --

10 GINA BOYD: Yes, ma'am.

11 THE COURT: So the pregnancies, I'm assuming
12 didn't all occur at the same time because the
13 daughters are various ages.

14 GINA BOYD: Yes, ma'am.

15 THE COURT: So what happened in between, for
16 example, a seven year old, a five year old, and a one
17 year old in terms of his ability to still be around
18 you all and have another chance. He had a chance
19 between the seven year old and then the five year old
20 and the one year old. Was he in the house this whole
21 time?

22 GINA BOYD: Yes, ma'am.

23 THE COURT: Did you not know who was the father
24 of the seven year old.

25 GINA BOYD: I didn't know anything at the time.

1 THE COURT: Your daughters didn't tell you who
2 impregnated them?

3 GINA BOYD: No, Your Honor.

4 THE COURT: And you never questioned them about
5 testing to find out who the father of the child is?
6 At a minimum, to get child support to --

7 GINA BOYD: Yes.

8 THE COURT: -- assist in bringing up the child?

9 GINA BOYD: Yes, ma'am; I did at the time.

10 THE COURT: Okay. And then what did they
11 respond?

12 GINA BOYD: I'm not sure, you know.

13 THE COURT: Did they ever give you any
14 indication, of the seven year old, that Mr. Green was
15 the one who fathered the child?

16 GINA BOYD: No, Your Honor.

17 THE COURT: Okay. Then when she --

18 GINA BOYD: She gave me a name, but said that he
19 moved.

20 THE COURT: Okay. And then what did he tell you
21 as far as the five year old, who the father was?

22 GINA BOYD: I can't recall it, Your Honor.

23 THE COURT: And then what did ^{Minor 2} tell
24 you as to the father of her one year old?

25 GINA BOYD: A boy at school, a boyfriend she

1 had.

2 THE COURT: Okay. If they -- do you feel like
3 you're close to your daughters?

4 GINA BOYD: Yes, ma'am.

5 THE COURT: If they didn't tell you this and
6 then this goes on for a period of seven or eight
7 years and then three children get fathered, one would
8 have to think that Mr. Green has some type of
9 influence over them that would make them not come
10 forth like that.

11 GINA BOYD: And I had to deal with that, Your
12 Honor.

13 THE COURT: But you understand where I'm
14 sitting?

15 GINA BOYD: Oh, yes, ma'am; yes, ma'am, I do.

16 THE COURT: To see two -- one child two years
17 past five, another child --

18 GINA BOYD: Yes, ma'am.

19 THE COURT: -- four years past five, another
20 child, and at the same time he's in the house. If
21 they're not getting impregnated, he's still having
22 sexual relations and fathering them.

23 Something is going on to make them not come
24 forward for it to be a pregnancy that occurs. Do you
25 understand? And I know you've gone through the

1 counseling and dealing with this, and I'm not trying
2 to beat you up.

3 I'm trying to say I've got to deal with him
4 insofar as what has gone on for this some eight or so
5 year period of time.

6 GINA BOYD: Yes, ma'am.

7 THE COURT: Even so far as protecting him, not
8 only as to your daughter, as to their children or
9 anyone else that's regarding this, as well.

10 GINA BOYD: Yes, ma'am.

11 THE COURT: Okay. And I apologize. You know,
12 I'm sorry for all that you have been through. As a
13 mother, I'm sure this is hurtful and something that's
14 been very difficult for you to deal with.

15 GINA BOYD: Yes, ma'am, it has.

16 THE COURT: Okay. Thank you.

17 GINA BOYD: Thank you, Your Honor.

18 THE COURT: Okay.

19 MS. FENT: Your Honor, if I may.

20 THE COURT: And before you go to sentencing,
21 because I still need to advise him of his rights.

22 MS. FENT: Okay.

23 THE COURT: All right. Mr. Boyd, you have heard
24 from the State's presentation of the case, and you
25 told me you agree with those facts. Do you

1 understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Is that still the case?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. How do you wish to plead with
6 respect to each of these offenses?

7 THE DEFENDANT: Guilty, Your Honor.

8 THE COURT: Okay. And are you pleading guilty
9 because you are, in fact, guilty of these crimes?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. The criminal sexual conduct
12 with a minor in the second degree, that is considered
13 a most serious offense, which means it's a strike
14 against you.

15 To the extent that you have got other serious or
16 most serious offenses, you could find yourself facing
17 life without the possibility of parole. Do you
18 understand that?

19 (Pause)

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And also, if I'm correct, the
22 criminal sexual conduct with a minor in the second
23 degree is going to require the sexual registry?

24 MS. FENT: Yes.

25 THE COURT: Okay. So you understand that's

1 something you'll have to do for the rest of your
2 life?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Register, and then anybody can look
5 on the internet and know where you live in terms of
6 any neighborhood? You understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Okay. I believe you were in the
9 courtroom when I just sentenced the last gentleman
10 who failed to register as a sex offender. So to do
11 so, that would be a crime in and of itself, too. Do
12 you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. Because that's a lifelong
15 registry.

16 MS. FENT: It's actually all of the offenses
17 require registry.

18 THE COURT: Okay. You understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. So there's no doubt about
21 your registry. With respect to your offenses, as
22 well, there are going to be felonies on your record.
23 Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. And that's a consequence of

1 this plea, as well?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Has anyone forced you or threatened
4 you to plead today?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Are you doing so of your own free
7 will?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And that means on a voluntary basis?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And has your attorney explained to
12 you the nature of the charge, your maximum possible
13 punishment, and your Constitutional Rights?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. And have you understood
16 his conversations with you?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. And at this time, have you
19 understood all of my questions to you?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. And have they been your own
22 answers?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. And that with respect to
25 certain of these offenses, for example, even incest,

1 the Court can sentence you to no less than one year.

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. All right. The Court will
4 accept your plea. You have ten days to appeal the
5 guilty plea and/or sentence and then up to one year
6 to challenge your attorney's representation under a
7 Post Conviction Relief application. Do you
8 understand that?

9 (There was no response).

10 That means, first of all, you have ten days to
11 appeal any plea or sentence that I would give. Do
12 you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And that to the extent you want to
15 challenge how your attorney has represented you, you
16 would have up to one year to do so under a Post
17 Conviction Relief application. Do you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Are you satisfied, though, with your
20 attorney's representation?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. All right. Now, let's hear
23 from the State with respect to sentencing.

24 MS. FENT: Your Honor, when the Court orders no
25 contact as a condition of bond, there's a couple of

1 reasons for it. One is, obviously, for the physical
2 safety of the victims, but the other one is as
3 applies this case are that the victims are in no way
4 influenced by the defendant trying to get them to
5 come in and speak on their behalf.

6 We had suspected that possibly there was some
7 contact, but I didn't know that for sure. So I never
8 filed a motion to revoke his bond based on that path,
9 but in watching today the family, he was sitting out
10 in the hallway with his arm around one of his
11 daughters while we were waiting to call this case
12 today. I find that extremely troubling. In talking
13 to D.S.S. and their involvement in the case, they
14 explained this relationship, the defendant as being
15 incredibly controlling over this family; that he
16 basically had these children on lockdown. They went
17 to school, and they came home. And that was it.

18 One of the girls, when D.S.S. became involved
19 did not even know what a shopping mall was. In the
20 statement that they gave law enforcement, I'd like to
21 read some of the things that they explained about
22 this relationship.

23 Minor 1 explained that it started when she was
24 in the seventh grade. She conceived her first child
25 when she was 13 years old from the defendant, and her

1 second child when she was 15.

2 She said that basically, asked when it would
3 happen and when they would be alone because they had
4 three sisters. She said, "My dad would tell my mom
5 to go to the store and tell her who to take. She
6 would leave one of us there with him, and that is
7 when we had sex."

8 He asked -- they asked, "How many times do you
9 think your father had sex with you?" She said maybe
10 20 to 30 times.

11 "Did you ever talk to your father about him
12 being the father of your children?"

13 She said, "No. I tried to stay away from
14 talking with him about it being the father. I tried
15 to forget the he was the father of my children."

16 She indicated that the family was scared of him.
17 When she spoke with the case manager with D.S.S., she
18 explained the first time her father approached her,
19 she was in middle school. Her mother was in the
20 hospital for a tumor.

21 Willie called her into his bedroom. He started
22 taking off her clothes and told her not to say
23 anything. Asked if they had sex that night, she said
24 yes.

25 She said she was so scared, but there was

1 nothing that she could do. She told her that this
2 was their secret, and if her mom found out, her mom
3 would kill herself.

4 She said it would happen about three times a
5 week. Asked why she didn't tell her mom, she said
6 because this had happened to a friend of hers, and
7 her mother did not believe her and put her out.

8 She said, "I had nowhere to go if I got put
9 out." Then she said she did not want her mom to kill
10 herself.

11 Explaining the situation of when she got
12 pregnant, she said that she had missed her period.
13 She said Willie kept saying it would come on, but it
14 never did.

15 Willie made up a story for her to tell her
16 mother. He said tell her that you skipped school and
17 you went to an abandoned house with a boy named Shane
18 Outing, but he had moved from South Carolina because
19 his family was military.

20 She said the next baby she had told him that the
21 baby's father -- the father's name was something like
22 Johnson.

23 She feels like she will never have a life of her
24 own. The victim, ^{Minor 3} also gave a statement:
25 "Tell me how this sexual relationship began."

1 She said, "When I got in the ninth grade, it
2 just started. It ended when my sister, ^{Minor 2} told
3 my mom. That would have been January of '07."

4 Can you remember what Willie said to you when he
5 began having sex with you? She said, "I remember one
6 thing. I don't tell you what" --

7 THE COURT: Which one are you talking about now?

8 MS. FENT: This is ^{Minor 3}

9 THE COURT: Okay.

10 MS. FENT: She said, I remember one thing; don't
11 tell your mama what happened. She might not like me
12 anymore and she might kill herself. He also told me
13 in the beginning, "'You ain't no baby anymore.' He
14 told me that I was grown or something."

15 "How often did they have sex?"

16 She said it was like on weekends or when she had
17 a break for school or when her mother left the house.

18 "How do you feel about your relationship with
19 Willie Green?"

20 She said, "I felt bad. It was like he owned us.
21 We couldn't do anything. We couldn't go out with
22 friends. We couldn't have boyfriends. We couldn't go
23 out of the house. We just stayed in the house and
24 did stuff with him."

25 ^{Minor 2} also gave a statement, said it began in

1 January of 2004 when she was either 14 of 15. Asked,
2 "Was Willie having sex with any of your sisters?"

3 She said, "Yes, but he didn't know that I knew.
4 He would tell me that I was the only one, but I
5 figured out that he was also messing with my
6 sisters."

7 "How did Willie start messing with you?"

8 "The first time, he was looking for one of his
9 hunting dogs. He came into the house, and I was the
10 only one that was up. Everyone else was sleeping.
11 He told me to come ride with him to look for the dog,
12 but instead he had tried to pull -- he had pulled
13 down into this road which leads into the woods.

14 "He was sitting in the car trying to see if we
15 could hear the dogs. He looked at me and started
16 kissing me. First, he kissed me like I was his
17 daughter. Then he started kissing me like I was a
18 grown lady, not a daughter but like a wife. Then he
19 started touching me on my breasts. Then he was
20 licking me on my neck, then he stopped.

21 "He pulled out of the woods. When he went back
22 home, I was crying. He asked me if I was okay, and I
23 said yeah, but I wasn't. Then he looked at me, and
24 he said, 'Don't let anyone find this out. This was
25 his and mine secret.' then he made me swear to God

1 that I wouldn't tell."

2 Asked, "When did he start having sex with you?"

3 She said it was in the same month. That would
4 have been January of '04.

5 "It was at the house. He sent everybody out of
6 the house to the store but me. I had a blue v-neck
7 shirt on and some white shorts." This is a memory
8 that she is never going to forget, Your Honor.

9 "He laid me on his bed and started kissing me
10 with his tongue in my mouth and started licking my
11 neck. Then he unzipped my pants. He pulled out his
12 penis. I was looking scared because it was my first
13 time. I hadn't done anything like this before.

14 "He didn't know that I was having my menstrual
15 cycle. I told him that I didn't want to get
16 pregnant. He said that I wasn't going to get
17 pregnant.

18 "He put his penis inside me and it hurt, and I
19 was crying. He was telling me to relax. He didn't
20 wear a condom."

21 What did Willie say -- or, "Did Willie say
22 anything to you afterwards?"

23 "He was telling me to act normal when they came
24 home, to act like nothing happened. He told me to
25 stop walking like that. I was walking differently

1 because I was hurt between my legs, and I was
2 swollen."

3 "Did he continue having sex with you after this
4 time?"

5 "Yes. Ever since the first time. It hadn't
6 stopped until we moved out to Sistercare. It was
7 every week and every month. He didn't stop since he
8 started."

9 She goes on to describe other incidents of oral
10 sex with him. At the end of this statement, the
11 investigator asked, "Can you think of anything else
12 that might be helpful in this investigation?"

13 She said, "I would like him to go to jail and do
14 some time."

15 There is really nothing that I think any of us
16 could say that can describe the depths of truly how
17 vile these actions are. He violated not only one of
18 his daughters, two of his daughters, but three of his
19 daughters.

20 He violated them in the deepest way that anybody
21 could be violated. We are asking that your sentence
22 today, Your Honor, sends a message, sends a message
23 to the defendant. It sends a message to his wife and
24 the mother of these daughters. It sends a message to
25 these lovely young ladies who are his victims, and it

1 sends a message to the children that he has had with
2 them.

3 This is not only going to affect them. It is
4 going to affect generations, generations of human
5 beings that are a result of these sexual acts that he
6 committed with his daughters impregnating them,
7 generations.

8 There is no other appropriate sentence that will
9 send that message other than the maximum sentence,
10 and that would be 60 years. That's all, Your Honor.

11 THE COURT: Thank you. Mr. McElveen.

12 MR. McELVEEN: Thank you, Your Honor. Your
13 Honor, this happened in May. He was arrested in May
14 of '07.

15 I think that these events came to light a little
16 bit earlier than that. He moved in with his cousin
17 immediately. He moved out of the house and has not
18 had any contact.

19 Now, yeah, he was out there in the lobby with
20 his family. The State brought his family here. I
21 didn't bring them here. I didn't know they were
22 coming, and yet, he talked to them.

23 I think that's perfectly normal, Your Honor. If
24 the State feels that's something that should be held
25 against him, I don't know how to address that.

1 But since this has happened, he has done exactly
2 what he was told. He hasn't been anywhere near them.
3 They've been to my office several times, Your Honor,
4 by themselves.

5 I've had long conversations with them. Not in
6 his presence, not with me asking them anything but,
7 "What would you like to see happen here? How do you
8 feel about this?"

9 I have never seen the slightest indication that
10 they're subject to any overbearing or control. You
11 know, the State may not like what they're saying here
12 today, but this is a family that the State is not a
13 part of.

14 Why they feel the way they do is their business.
15 These are not -- these are not girls, Your Honor,
16 that are -- that are simpletons.

17 Minor 1 Your Honor, works and she is at
18 Midlands Tech. Minor 2 is at W.R. Rogers in adult ed
19 getting her G.E.D. so that she can go on to Midlands
20 Tech herself. Earleen is a senior at B.C. with
21 excellent grades. Again, Your Honor, these are
22 children that think for themselves.

23 For whatever reason, they feel like their family
24 would be best served by not destroying it by sending
25 him off to prison for a long, long time.

1 I understand that this is very difficult
2 situation and a very weird situation. It can't be
3 undone. Obviously, it can't be undone. To undo it,
4 I'm not even sure what that would mean.

5 I think what these girls are saying when they
6 stand in front of the court is they have thought
7 about this, and they have given this thought over the
8 last months, and they have forgiven him.

9 He has been seeing Dr. Krell at church. She is
10 here to talk to the court. I'm going to ask that she
11 speak. All the girls have received counseling.
12 Mrs. Boyd has received counseling.

13 They have -- they have dealt with this in a
14 straightforward, mature, and Christian way, Your
15 Honor, and they know what they want. I'm going to
16 ask Dr. Krell to step down, if she would.

17 MR. McELVEEN: Introduce yourself. Tell her
18 your professional direction, as well. Your Honor.

19 MS. KRELL: Okay. I'm Barbara Krell. I'm with
20 the pastoral staff with Confession Springs church,
21 home of the Colonial Christian Academy.

22 We have an inner-city work, and we work with
23 kids who have been expelled, kids who have been
24 abused. We have interns that come from U.S.C.,
25 C.I.U. and other schools that work with us.

1 I have known Willie's family for a number of
2 years. His mother is one of the founding members of
3 the church. It's small inner-city non-denominational
4 interracial church.

5 I had not met Willie, I guess, three or four
6 times, but his mother came to me and said to me some
7 things that I have not repeated. And I would like to
8 repeat them today.

9 I certainly am appalled. I've worked with
10 children, you know, that are being sexually abused,
11 and we just graduated 13 children, and -- but I would
12 like to say this: Mrs. Jackson, his mother, came to
13 me and said -- this was about two months before she
14 died.

15 She said, "My son, Willie -- you don't know
16 him -- but I have told him if he ever doesn't know
17 where to go or what to do, to come to you before he
18 kills himself."

19 She said, "The baby that he has, I suspect
20 that's his baby, the grandbaby." And she said, "I've
21 helped him. I love him, but he has some -- some
22 mental problems that I have not been able to get help
23 for; that I have bought a home, placed him in it."

24 He's a hard worker, but he -- he graduated. I
25 think he went to the tenth grade in school, but he

1 had learning disabilities. He had emotional
2 problems. He came and spoke with me when it happened
3 that his children were removed.

4 He was on the verge of suicide.

5 May I say what you said to me?

6 (The defendant nods in the affirmative).

7 MS. KRELL: And -- and I said, "What happened?"

8 He had a gun, and he said, "I'm ready to blow my
9 brains out."

10 I said, "Anything you tell me, I have to call
11 the police or D.S.S. or an authority."

12 He said, "Well, they've already taken my
13 children."

14 I said, "What's wrong?"

15 And he said -- and he just started talking, and
16 he said, "When I was a child, my uncle molested me,
17 and I want to know if I'm gay or not. Am I
18 homosexual?"

19 He talked for probably two or three hours, and
20 -- and then he said to me that he had molested the
21 children, the one girl. He told me about the one
22 girl. Then he told me about the second girl and
23 that's all.

24 I said, "You need to go to Baptist, Richland
25 Memorial Hospital and get the best psychiatrist that

1 you can find because you're sick."

2 He was very repentant.

3 Did you go to the hospital that night?

4 THE DEFENDANT: Yes, ma'am.

5 MS. KRELL: And he told me that he was going
6 over, and he -- I said to him, "You need to get an
7 attorney."

8 He came back once after that and talked with me.
9 He came back a couple more times, and he came back a
10 couple days ago.

11 And his family, he's from an extremely good
12 family, educated people. Both of his sisters are
13 professional women, and I've known the family for a
14 number of years.

15 I've not known and had a lot of interaction with
16 Willie, but I do know that his mother suffered deeply
17 because she always felt that she couldn't get anyone
18 to help him.

19 She tried to help the family. She did tell me
20 that he was on drugs in and out; that he was the
21 hardest worker that she knew, but it was something
22 lacking mentally that he could never get his life
23 together.

24 I'm not trying to bring any excuse to the Court.
25 I'm just saying that I wonder why no one has taken on

1 the position to get him help.

2 I wonder how this could happen to three girls in
3 one home and a mother not know about it. I'm a
4 mother of seven children of my own, two foster
5 children included, as well as a thousand others and
6 you know.

7 I do know that he does have some mental problems
8 that need to be addressed. I'm not trying to excuse
9 anything, but I'm just here to say, on behalf of his
10 mother, that I do know that he has been a good
11 provider to his family.

12 I know there is a level of illiteracy, a level
13 of not being able to comprehend right from wrong. A
14 child, many times, just in the brief time that I have
15 spent with him, and in talking with his mother, but
16 he told me that he had been molested by his uncle and
17 also that his sister had been molested.

18 I verified that, and that was true. When he
19 went to the first court in -- out near Shop Road, out
20 that way, I was there and went in.

21 I almost fell on the floor when I heard that
22 there was another child that had a baby, but I'm
23 standing with the family.

24 We have counselors, but he needs more than what
25 we can give, but he does have a church. He does have

1 a family that will support him.

2 We've already bonded with the young girls, but
3 they -- they told me that they have been in
4 counseling some.

5 When he sat down outside, he had his arm on the
6 bench and his daughter sat down, so it wasn't a
7 matter of if he was molesting his daughter or hugging
8 her affectionately.

9 He had his arm on the bench because I went over
10 and was standing there beside him. I'm just saying
11 what I feel and what I see.

12 Anything that I can to do help, I'll be glad to.
13 I know his mother recognized all of this, and she
14 couldn't deal with it.

15 She was one of the finest citizens that I know.
16 You know, she helped, kept all of the kids in the
17 neighborhood in her home.

18 She graduated kids from college that didn't have
19 parents. She was frustrated that she could never
20 help her own son. I'm just saying as a court, as an
21 educator, how can we help you.

22 THE COURT: But one of the things you also
23 mentioned is his level of literacy and inability to
24 comprehend.

25 MS. KRELL: Uh-huh.

1 THE COURT: In any way, are you suggesting with
2 his dealings that he would not know what he was
3 doing --

4 MS. KRELL: I believe --

5 THE COURT: -- or have some -- or have some type
6 of mental disease or defect that didn't allow him to
7 conform his actions?

8 MS. KRELL: Yes.

9 THE COURT: You think that?

10 MS. KRELL: Yes.

11 THE COURT: And that's based on what?

12 MS. KRELL: I believe -- I believe that he could
13 not control himself. I believe that drugs were
14 probably 90 percent involved.

15 I believe because of the illiteracy with he and
16 his wife, that there wasn't a lot of social
17 interaction among other people.

18 And I know that we called his mother Mother
19 Jackson. She would take food over to the family, and
20 she would go over to check on their homes and check
21 on the children and take Christmas for them.

22 I believe that a psychiatrist, psychologist,
23 would find that there is some -- there is something
24 missing there.

25 I'm certainly not excusing it at all.

1 THE COURT: Okay. Thank you, ma'am.

2 MS. KRELL: But I do believe that he does need
3 to have an evaluation, a deep evaluation. You know,
4 not just am I able to understand what's going on, but
5 to be able to understand right from wrong.

6 I believe a lot of this was a teenager with
7 another teenager. We have children in our school
8 that are 17 years old, but they're still five and six
9 years old with what their problems are. And that's
10 what I'm basing that on.

11 THE COURT: Okay.

12 MS. KRELL: Thank you for allowing me.

13 THE COURT: Thank you.

14 MS. FENT: If I could just ask --

15 If I could just ask if she -- make sure, on the
16 record, that she is not a psychologist or a
17 psychiatrist herself.

18 MS. KRELL: I am. I have a degree from the
19 University of South Carolina Education.

20 MS. FENT: Are you a psychologist or a --

21 MS. KRELL: I am not a licensed psychologist,
22 no.

23 MS. FENT: Okay. Or a psychiatrist?

24 MS. KRELL: I have a degree in pastoral
25 counseling.

1 THE COURT: Okay.

2 MS. KRELL: And I also have a degree in
3 education from Pensacola Christian College, and I
4 have work that we're doing.

5 We also work with Dr. Wyman C. Alston from
6 Milledgeville Clinic in Milledgeville. He has worked
7 at our school and trained our people.

8 THE COURT: Okay. All right.

9 MS. FENT: I just want to make it clear in terms
10 of the mental defect, that this woman is not a
11 psychologist or a psychiatrist to make such a --

12 THE COURT: True. She is not --

13 MS. KRELL: Well, no, I'm not but I'm evaluating
14 him, because we have psychologists from U.S.C. that
15 work with us.

16 THE COURT: Right.

17 MS. KRELL: And we work under them as interns,
18 okay.

19 THE COURT: Okay. That's fine, and you're not
20 arguing --

21 MS. KRELL: All right. And I'm not trying to
22 allude to that fact, and I'm not trying to excuse him
23 either.

24 THE COURT: Right.

25 MS. KRELL: You know, I mean, I'd probably like

1 to knock him down right now, but I also love him.
2 He's a human being, and if he needs help, he needs
3 help.

4 THE COURT: Okay. Just as an aside, this is all
5 the Court's matters for the day.

6 I apologize, but it's already -- given the
7 lateness of the hour, this is a very significant
8 matter. I just say that so that you all don't wait
9 and let me say that later. You can excuse the other
10 persons that need to go on back to the Department of
11 Corrections. We'll take you up, deal with you in the
12 morning.

13 MS. WEISS: Your Honor, just -- if I may
14 approach real quick?

15 THE COURT: Sure.

16 (Pause).

17 I apologize for that. This is a lot this hour.
18 I don't choose to continue on with the other persons
19 that we have. I don't know how significant their
20 matters are.

21 (Off the record).

22 Okay. All right. Thank you for your time.

23 Okay. Before I get back to the State,
24 Mr. McElveen, you heard Dr. Krell's speak. I just
25 want to know, have you had any evaluations of Mr.

1 Green or during your conversations you felt the need
2 for any?

3 MR. McELVEEN: Judge, I have talked with Willie
4 at length, and I have never personally felt like
5 there was any issue as to adopting criminal insanity
6 or inability to assist in his right to defense or
7 anything like that.

8 I have discussed those matters with him prior to
9 coming in today.

10 THE COURT: Okay. And then she mentioned
11 illiteracy.

12 MR. McELVEEN: But I have not heard, have not
13 talked to Dr. Krell about these matters.

14 THE COURT: Right.

15 MR. McELVEEN: You know, she may have some
16 insight that I may not have.

17 THE COURT: Okay.

18 MR. McELVEEN: That's not --

19 THE COURT: Okay. And I'm not talking about
20 insanity necessarily as a defense. I'm talking about
21 inability to understand literacy --

22 MR. McELVEEN: Right.

23 THE COURT: -- because any sentence the Court
24 fashions needs to take into consideration the
25 complete person.

1 MR. McELVEEN: I don't -- I don't disagree with
2 her, but as far as -- you know, in the sense that I
3 think that he -- I don't think he is -- without
4 saying this in open court, I think he does see things
5 on a fairly simple level. I do -- I will agree with
6 that.

7 THE COURT: Okay. My concern is just about --
8 it's more than just a sentence in terms of figure out
9 how many years or probation or all of those. It's
10 always the services that go with the sentence, as
11 well.

12 I just -- I'm just a little concerned about her
13 comments in that regard as to whether or not he needs
14 to be evaluated.

15 MR. McELVEEN: Your Honor, would you be willing
16 to consider postponing sentencing?

17 THE COURT: Yeah. I mean, that's what I'm
18 trying to get at --

19 MR. McELVEEN: All right.

20 THE COURT: -- not does the Court need --

21 MR. McELVEEN: I don't think --

22 THE COURT: -- more information.

23 MR. McELVEEN: -- that would be a bad --

24 THE COURT: Excuse me?

25 MR. McELVEEN: I don't think that would be a bad

1 idea.

2 THE COURT: Okay.

3 MS. FENT: Evaluated in terms of his competency?

4 In terms of --

5 THE COURT: Well, the ability to understand
6 right from wrong, but also just his life's history on
7 these particular issues, because again, the Court
8 sentences the person with respect to their entire
9 abilities. Whether or not -- as part of his
10 sentence, if he's going to need any mental health
11 counseling or treatment. Just all of those factors.
12 I just don't have enough information about him.

13 MS. FENT: So more of a pre-sentence
14 investigation --

15 THE COURT: Yes.

16 MS. FENT: -- as opposed to an evaluation?

17 THE COURT: Yes. That can be done through
18 probation as a neutral fact finder.

19 Do you understand that, Probation? That you're
20 not in this case.

21 PROBATION AGENT: Yes, ma'am.

22 THE COURT: Okay.

23 PROBATION AGENT: Thank you.

24 THE COURT: And I'm -- do you understand what
25 I'm saying? I'm saying from the standpoint that

1 you're getting neutral facts with them, and I say
2 this because my last evaluations I had with you all,
3 it was pretty conclusory without the person having
4 actually evaluated, you know, the relevant medical
5 records and other stuff.

6 I didn't care for that, and so I just need to
7 make sure that, you know, some of these issues that
8 we're talking about are dealing with his schooling,
9 any health issues, any psychological evaluations, any
10 medications.

11 I mean, just to really have a composite of who
12 he is so that I can determine with fashioning any
13 sentence if there are any appropriate services that
14 should go with that sentence.

15 Okay. Do you see it, Ms. Fent, needing any
16 other way to have the evaluation done or you,
17 Mr. McElveen? Should it just be done with a pre-
18 sentence report or also through the Department of
19 Mental Health?

20 MS. FENT: If Mr. McElveen, I think, has not
21 seen anything, I mean if he wants to clearly make a
22 record like he hasn't seen anything that indicates
23 any type of mental history, mental defects, that
24 there is no need for that.

25 Additionally, in terms of his literacy that he's

1 gone over the plea paperwork with him that he
2 understood all that plea paperwork, then I think
3 probably just a pre-sentence investigation but --

4 THE COURT: Yeah.

5 MR. McELVEEN: I don't want to limit the scope
6 of any investigation that they do, Your Honor. I
7 don't -- I have stated, and I still believe, I don't
8 believe there is any legal issue of competency here.

9 THE COURT: Right.

10 MR. McELVEEN: But I think that anything that
11 probation feels should be looked into should be --

12 THE COURT: Well, and I guess there's two
13 different things. Probation tends to investigate --

14 MR. McELVEEN: Right.

15 THE COURT: -- from the standpoint of almost the
16 way D.S.S. does, but the Department of Mental Health
17 looks at it more from your psychological needs. Do
18 you understand what I'm saying?

19 MR. McELVEEN: Yes.

20 THE COURT: And I don't see the two -- I see the
21 two as being separate issues, so I think I should go
22 both ways, evaluation by the Department of Mental
23 Health but then also the pre-sentence report with
24 respect to the probation and the parameters that you
25 all usually do on the end, but understanding the

1 Court's clear mandate of a neutral fact-finding
2 investigation.

3 MS. FENT: I would also ask, Your Honor, that
4 the defendant be taken into custody pending this
5 investigation.

6 It was not until today that it was revealed we
7 were going to be asking for the maximum sentence, and
8 with that, his -- you know, the risk of his flight is
9 extreme.

10 THE COURT: So --

11 MS. FENT: He has entered his plea of guilty.

12 THE COURT: He has entered his plea and --

13 MR. McELVEEN: Your Honor --

14 THE COURT: Well, we also have a minimum
15 sentence of one year on the incest; is that correct?

16 MS. FENT: Yes.

17 THE COURT: Okay.

18 MR. McELVEEN: Judge, I would ask that he remain
19 at large. It's going to be a lot easier for him to
20 do this and probably probation to handle him in that
21 fashion. Secondly, he's obeyed his -- you know, for
22 a year-and-a-half, he has done exactly what he's
23 supposed to have done.

24 THE COURT: We have Dr. Krell --

25 MR. McELVEEN: I didn't know they were going to

1 actually --

2 THE COURT: -- mentioning some very troubling
3 issues with respect to him, too.

4 MR. McELVEEN: I'm sorry?

5 THE COURT: Dr. Krell has just mentioned some
6 very troubling issues with respect to him, as well.

7 MR. McELVEEN: Are you talking about the suicide
8 issue?

9 THE COURT: Yes.

10 MR. McELVEEN: You know, that's -- that's been
11 hanging out there ever since this happened, Your
12 Honor -- we knew from the start that they were going
13 to ask for substantial time.

14 THE COURT: Right.

15 MR. McELVEEN: I didn't know about the maximum
16 but --

17 THE COURT: Okay.

18 MR. McELVEEN: -- whether or not --

19 THE COURT: Okay.

20 MR. McELVEEN: I'm not supposed to know but
21 whatever.

22 THE COURT: Well, regardless, if I had sentenced
23 today, he would have had the minimum of one year, so
24 I'm going to ask that he be taken into custody.

25 MR. McELVEEN: All right.

1 THE COURT: And then I'd like -- I mean, I'm
2 subject to the time constraints of Department of
3 Mental Health and probation, but it would be nice if
4 it could be done within 30 days.

5 MS. FENT: Okay.

6 THE COURT: Okay. So I just ask you all to
7 cooperate with each other in terms of getting it
8 done. You know, I'm available. As soon as we get
9 the report, just schedule it with me.

10 MS. FENT: And the mental health, you want
11 competency and the...

12 MR. ROSS: Can we approach?

13 THE COURT: Yes.

14 Mr. McElveen, come forward, too.

15 (Whereupon, there was a bench conference.)

16 THE COURT: I've had a chance to review my
17 thoughts and notes with respect to the services that
18 I'm requesting of the Department of Mental Health.

19 I'm not asking for a competency evaluation,
20 because there's nothing been shown to me here that
21 that's necessary based on, Mr. McElveen, your
22 comments, based on the -- given extensive
23 questioning, myself, to Mr. Green.

24 Some of that issue did kind of come as some of
25 my questioning to Dr. Krell. She indicates her

1 degree is in education and pastoral counseling and
2 not with respect to offering an opinion in this case
3 on whether or not he is competent, has an ability to
4 stand trial, can assist in his defense, or he has any
5 mental defect or disease.

6 My issues are about his psychological history
7 and potential treatment options to make sure that,
8 again, upon sentencing, I'm treating the whole
9 person.

10 Okay. Anything further from the parties?

11 MR. McELVEEN: No, Your Honor.

12 MS. FENT: No, Your Honor.

13 THE COURT: Okay. I just ask you all to
14 cooperate with each other to get it done as quickly
15 as possible, and then I'll be available to you.

16 MS. FENT: Okay.

17 THE COURT: Thank you. Court is in recess until
18 9:30.

19 MR. McELVEEN: Thank you, Your Honor.

20 (Whereupon, the following was heard on April 30,
21 2009.)

22 THE COURT: You may proceed.

23 MS. FENT: Thank you, Your Honor. Standing
24 before you is Willie Green represented by George
25 McElveen of the private bar.

1 Mr. Green entered guilty pleas on July 31st of
2 2008, to two counts of C.S.C. with a minor in the
3 second degree, one count of C.S.C. third degree, and
4 one count of incest.

5 It was requested at that time by the Court for a
6 pre-sentence investigation to be done, as well as an
7 evaluation. Both probation had submitted a pre-
8 sentence evaluate investigation and there has been an
9 evaluation by Dr. Jeffery McKee on the defendant
10 since then, so we are here for sentencing.

11 THE COURT: Okay. All right. So -- and at the
12 time that I asked for that evaluation, it was because
13 there -- as I recall, some comments on the record
14 indicating that he might have had some either mental
15 issues or some psychological issues or things of that
16 nature.

17 I did accept the plea at that time, but I wanted
18 further evaluation. I knew it took some time for us
19 to get that done because the Department of Mental
20 Health was trying to figure out what they were going
21 to evaluate.

22 I essentially told them evaluate for criminal
23 responsibility and just any general psychological or
24 any of those issues, so that we could have those
25 clarified.

1 Are the parties, the State and Mr. McElveen,
2 satisfied that that evaluation has been done and with
3 those parameters?

4 MR. McELVEEN: Your Honor, I will state that the
5 evaluation that was done by Dr. McKee was very
6 specifically limited to a risk assessment.

7 THE COURT: Okay.

8 MR. McELVEEN: I'm not sure if that's what the
9 Court was asking for. I think there was -- my
10 impression at the time of entering the plea was the
11 Court was looking for more of a psychological
12 profile. I'll just, you know, make that comment.

13 MS. FENT: If I could clarify and ask
14 Mr. McElveen to clarify for the record, what
15 basically happened at the plea was a woman who is
16 some kind of a social worker and was standing up as a
17 friend for Mr. Green said something to the effect of
18 that she just didn't think he was right, just some
19 generic, you know, statement.

20 She is not any type of psychiatrist or
21 psychologist or qualified to say anything about the
22 defendant's mental health.

23 He -- the Defendant, you know, entered a plea.
24 He answered all of the questions that the Court posed
25 in terms of understanding what his rights were, what

1 he was charged with, what we were doing.

2 He has also been previously represented by the
3 public defender's office, and there's never been any
4 indication from the public defender's office or any
5 request for any competency evaluations or mental
6 health evaluations.

7 I guess we would just -- so it's on the record,
8 if Mr. McElveen could express whether or not he has
9 ever had any concerns, because the plea was accepted,
10 if he's ever had any concerns that the defendant
11 doesn't understand what the purpose of the courtroom
12 is, what everybody's roles are and what he has done
13 in this case.

14 MR. McELVEEN: Your Honor, I'm not raising legal
15 issues. I'm just addressing what I thought was the
16 purpose of the original request, for the
17 psychological evaluation was.

18 THE COURT: Okay. Well. I'm received with the
19 report that I have received insofar as the issues
20 being addressed both with the pre-sentence
21 investigation as well as with this report. I believe
22 that it's time for us to move on in that regard.

23 Okay. That having been said, we do have the
24 pre-sentencing investigation. You all are aware of
25 that, and then the plea was accepted, but I do want

1 to just go over this -- some of the more formal
2 issues with respect to the plea.

3 Mr. Willie Green, you do recall us being here on
4 July 31st, 2008, in terms of you -- me asking you
5 questions about your plea in this case?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Okay. You do understand that before
8 the Court is two counts of criminal sexual conduct
9 with a minor second degree, one count of criminal
10 sexual conduct, third degree, and then one count of
11 incest.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. You are aware that for those
14 sentences, the incest carries a period of one to ten
15 years; the criminal sexual conduct, third degree, a
16 maximum of ten years; and the criminal sexual conduct
17 second degree, a maximum of 20 years, for a total of
18 60 years if they were to run consecutive?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Okay. And then you were evaluated,
21 as well as you are aware that there was a pre-
22 sentence report investigation done by the Department
23 of Probation Parole and Pardon Services, too?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. All right. You do understand

1 that by pleading guilty, you give up your
2 constitutional rights to go to a jury trial and
3 challenge any of the State's evidence, correct?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. You understand that at the
6 trial you could have challenged any of their
7 witnesses, and presented defenses or testimony on
8 your behalf, as well?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. You do understand that the
11 State has to prove you guilty? You're not required
12 to prove yourself innocent.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. But you're giving up the
15 right to go to trial and challenge any of their
16 statements or evidence or anything because you're
17 pleading guilty, correct?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. You would have ten days to
20 appeal any guilty plea and/or sentence, okay?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And do you feel like you've had
23 enough time --

24 MR. McELVEEN: Excuse me one moment.

25 THE COURT: Sure.

1 (Pause).

2 THE COURT: If you don't understand my
3 questions, do ask me. Only you can answer these
4 questions.

5 (Pause).

6 THE COURT: Okay. Do you understand my
7 questions?

8 THE DEFENDANT: No.

9 THE COURT: Okay. Let's start over. You
10 understand that you plead guilty; you plead guilty to
11 these charges? You're saying that you, in fact, did
12 these charges, correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And then you are giving up your
15 right to go to a jury trial in which you could have
16 challenged the State's evidence.

17 In other words, you could have had a trial and
18 required that the State meet their burden of proof
19 and required that a jury be the jury who says that
20 you are, in fact, guilty. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: You're giving up that right by
23 pleading here today.

24 THE DEFENDANT: Yes, Judge Childs, Your Honor.

25 THE COURT: Okay. So you understand also that

1 the State has to prove you guilty. You don't have to
2 prove yourself innocent. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. But you are telling this
5 Court by pleading guilty that you are, in fact,
6 guilty, correct?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: So you're admitting factually that
9 you did what the allegations are that have been
10 presented to the Court?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. And so that's why you're
13 pleading guilty, because you are, in fact, guilty,
14 correct.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Anyone threaten you or punish you
17 into pleading guilty today?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Are you doing so voluntarily and of
20 your own free will?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. All right. So the Court had
23 accepted your plea before, but I'm further satisfied
24 that you are entering this plea knowingly,
25 intelligently, and voluntarily. Are you satisfied

1 with the representation of your attorney?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you feel like you've had enough
4 time to speak with him about these issues?

5 (Pause).

6 THE DEFENDANT: No, ma'am.

7 THE COURT: What else do you need to talk to him
8 about? You can step aside and speak to him about
9 anything. If there's anything else you need to talk
10 to him about, go ahead.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you need more time to speak with
13 him?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. Go ahead.

16 (Pause).

17 THE COURT: To the extent that you need to ask
18 me any questions or ask your attorney anymore
19 questions, just let me know, okay.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. Ms. Fent.

22 MS. FENT: Your Honor, I'll just briefly, I
23 guess, review some of the facts. We have three
24 separate victims in this case. All three of these
25 victims are his daughters.

1 I will start out by saying, and I will finish by
2 saying this, that the only appropriate sentence in
3 this case is 60 years, the maximum sentence.

4 If you just take one of these charges, just take
5 a C.S.C. with a minor in the second degree, a father
6 having sex with his daughter one time is worth a
7 20-year sentence.

8 It is the most basic violation of a relationship
9 in a person that can happen. That single act by that
10 relationship is worth 20 years, but we have more than
11 that. Each of these young ladies explained how they,
12 multiple times, weekend after weekend after weekend,
13 he had sex with not one, not two, but three of his
14 daughters. That alone justifies the maximum
15 sentence, but we have more than that.

16 We have a father who had sex with three of his
17 daughters weekend after weekend after weekend, and he
18 got two of them pregnant. He has produced children
19 as the result of this horrific, vile act.

20 From the very beginning when I got this case, I
21 was trying to think of what word, what word in the
22 English language could encompass how horrible this
23 is, and there is not a word. There is not a word.

24 This is just so absolutely horrific, but we have
25 more than just that he had children from two of his

1 daughters. One of those daughters had two children,
2 so there are three children out there as a result of
3 this vile, horrific act.

4 So weekend after weekend after weekend, he is
5 having sex with not one daughter, not two daughters,
6 but three daughters. He gets them pregnant one after
7 another, after another.

8 From all the indications from these daughters,
9 if he was controlling, he was isolating. He had been
10 manipulative from the very beginning. "If you tell,
11 your mother will kill herself. She will commit
12 suicide."

13 That -- I mean, just -- just a minimal amount of
14 the evidence in this case, just a minimal amount of
15 it calls for the maximum sentence.

16 It doesn't get any worse than this. These
17 children, the grandchildren/children -- I mean, his
18 grandchildren are his children.

19 This doesn't just affect these lovely young
20 women that are his daughters that he violated, this
21 affects generations of people, not them, not their
22 children, but every child that comes later, every
23 child for generations.

24 It is not just a psychological impact. This is
25 a medical impact. These children, grandchildren,

1 when they want to have children, have to tell their
2 loved one, "We may have a problem with our offspring,
3 because my dad is my grandfather. We may have to
4 decide not to have children," because they will be,
5 you know, potentially, medically impacted as a result
6 of these vile, vile acts.

7 These young ladies came in here, and they're
8 here today. I don't know if they want to speak or
9 not, and I am not antagonistic toward these lovely
10 young ladies that came up here and requested for
11 probation. I do not judge them.

12 None of us can imagine, you know, what this
13 would do to our psychological, you know, well-being,
14 and I'm sure that what they want to do is they want
15 it to just go away.

16 You know, so them asking for probation, I do not
17 judge, but it is for us that is outside of this
18 relationship that sees it for what it is. Not a day
19 less than 60 years is appropriate in this case, Your
20 Honor.

21 Thank you.

22 THE COURT: All right.

23 MR. McELVEEN: Thank you, Your Honor.

24 Your Honor, again I'll start by saying that
25 people that plead to killing people in this courtroom

1 don't get 60 years, and the State doesn't really ask
2 for that.

3 At any rate, Your Honor, I don't know if you
4 remember, but these young ladies did speak at the
5 plea, and I think they do want to speak again.

6 You'll be able to tell, as I think you were all
7 able to tell before, these are articulate women.
8 They are professional women, you know, moving forward
9 in life. They are not cowed, or beaten down, or
10 mentally insufficient, or anything like that.

11 Your Honor, this is a very troubling case, and
12 I'll be the first to admit that, but I will also say
13 it also has some unusual aspects about it, Your
14 Honor, before I go into anything else, I wanted to
15 hand up a letter from Dr. McKee.

16 THE COURT: Okay. And has the State seen it?

17 MS. FENT: Yes, Your Honor.

18 MR. McELVEEN: In that letter, Your Honor, he,
19 of course -- and in his investigation, in his
20 evaluation, he was diagnosed, really, with
21 paraphilia, which is a sexual attraction to young
22 adolescent females.

23 In that letter, Your Honor, he describes it as a
24 treatable condition. It is treatable not only inside
25 the Department of Corrections but also outside of the

1 Department of Corrections.

2 In the beginning, Your Honor, Willie has been
3 deeply troubled by this. He's been ashamed of --
4 hardly been able to speak. He has had his family who
5 has stood beside him. His wife is here.

6 His three children are here, and each of those
7 have made an impassioned plea that he not receive
8 incarceration.

9 Your Honor, they have very good reasons for
10 doing so, and they have their own reasons for doing
11 so. Again, Your Honor, the solicitor's office is --
12 they represent victims every day. They have to take
13 them as they come.

14 They have to take the victims as the victims
15 are, unless there is some objective reason to
16 discount what those victim want to say and what they
17 may want to see happen.

18 Your Honor, Willie is deeply committed to
19 addressing the problems that he has, and he's told me
20 that time, and time, and time again.

21 He has -- he has worked since the day he left
22 school. He has a strong, long-standing work ethic.
23 I have a letter here from his last employer where he
24 was working when he was incarcerated.

25 THE COURT: Okay.

1 MR. McELVEEN: He has always been an active
2 member at his church. I have a letter here from
3 Dr. Krell to that effect. You know, I think we went
4 over these things before, but we have to discuss
5 these things again.

6 Your Honor, I know that Willie wants to talk to
7 the Court. I think that his family does, too. I
8 would ask first of all, that his wife Gina stand and
9 tell the Court what she thinks about this.

10 THE COURT: Okay.

11 THE DEPUTY: Stand right here, ma'am.

12 GINA BOYD: My name is Gina. I want you to know
13 basically what Willie was like. It's all about God
14 that we're here and giving him another chance. It
15 came to our heart that we should forgive him. It was
16 very hard for us to do what we had to do. We can't
17 go back and undo what's been done, but I forgave him.
18 The children have forgiven him, and we ask that you
19 have mercy on him.

20 He is a changed man. He has God in his life.
21 He has been leading Bible study at the jail where
22 he's incarcerated.

23 Everybody there who knows him speaks highly of
24 him. He has been a good man. That's why I know
25 something really had to be wrong for this to have

1 happened. Something had to have been wrong for this
2 to have happened because I know him. We've been
3 together all these years. I ask that you just let
4 him get help, Your Honor. He can't get help if he's
5 in prison.

6 I do believe God has a purpose for him. God do
7 (sic) have a purpose for him. I know it was just
8 something that he couldn't help it at the time, but
9 I -- I have forgiven him. They have, and He has a
10 purpose for him. I do believe that he has changed.

11 You know, he has a lot of leadership qualities
12 about him. Anyone who meets him or works with him or
13 gets to know him, they automatically fall in love
14 with him.

15 He has -- he has learned a lot. He is reading,
16 and he's writing, and I hate that this happened, but
17 there's nothing we can do about that now. It
18 happened. We can't go back and undo what has been
19 done.

20 All we can do is move forward and live day by
21 day, but my children love him so much, even after
22 enduring what they have went through. If -- if he
23 were to get a lot of time, it would really hurt them
24 because they still love him so much, and they have
25 forgiven him. So I just ask that you should show

1 mercy on him.

2 It would be another harsh amount of pain on them
3 if he were to get a lot of time, Your Honor. I'm
4 speaking of this because this is what I know, because
5 my children talk to me, and they have had counseling.

6 I know it is going to be a big, big thing, but
7 we deal with it, Your Honor. We deal with it. We
8 deal with it through God what has given us strength,
9 so I ask that you please have mercy on him, Your
10 Honor. Please have mercy on him.

11 THE COURT: Thank you.

12 Minor 3 Hello, Your Honor. My name is
13 Minor 3 and all I want to say is I forgive, and I've
14 learned how to forgive and forget.

15 I've been with the Lord, and I got strength and
16 courage, and all I want is to show mercy on him.

17 Thank you.

18 Minor 2 Hi. I'm his daughter, and I just
19 want to let you know that I forgive him, and I have
20 learned to forget with counseling.

21 It would hurt me worse if he was to do the whole
22 60 years. It would not make it better. It would
23 make it worse, and I ask that -- for y'all to help
24 him. Please get him some help and have mercy on him.

25 Thank you.

1 Minor 1 Hello, Your Honor. This is

2 Minor 1

3 All I want to say is that I do forgive my father
4 from the bottom of my heart. I took it day by day,
5 but I totally forgive him. I'm moving on with my
6 life and just forgot about it.

7 I have seen that he's going to Bible study and
8 writing verses and got God in his life, and I never
9 really saw that before, so I guess he's changing.
10 But I do ask for mercy, Your Honor.

11 Thank you.

12 MR. McELVEEN: Your Honor, I would like to add
13 that each of these individuals is out of the home.
14 They're -- they're all self-supporting. Nobody is at
15 home now except for Mrs. Boyd.

16 Again, Your Honor, in every other aspect of his
17 life, he has been -- he has done the things he's
18 supposed to do. He has never, never been without a
19 job. He has always worked. He has always made
20 money.

21 He has, for whatever reason, engendered deep
22 loyalty from his family. Your Honor, this is a
23 sickness. Of course, it's a crime, and nobody is
24 excusing that, but it's also a sickness.

25 Willie has openly embraced the fact that he has

1 a serious, serious problem, and that he needs
2 serious, serious assistance. He wanted to talk with
3 the Court about that himself.

4 That's really all I have to say, Your Honor,
5 just to look at this case as the unique situation
6 that it is, and I think the family wishes
7 consideration, because they are the victims in this
8 matter, Your Honor.

9 THE DEFENDANT: Your Honor, my name is Willie
10 Green, Your Honor. I wanted to let you know, Your
11 Honor, that I've been a child abuser all my life. I
12 had been abused by my uncle. I have been abused by
13 the babysitter. I've been abused when I was nine
14 years old. I was molested three times by the
15 baby-sitters, and I wanted to tell my mother when I
16 was a victim, young, but she loved her brother so
17 much. So I kept it inside me ever since I was young.

18 Then that's about -- things started -- voices
19 and stuff started coming into my life, and I should
20 have went to my mother and told her I needed help,
21 but after a while, she told me that something was
22 wrong with me, because I had changed in her life.

23 She asked the lady who came into court with me
24 to see what was wrong with me. I told her everything
25 that -- what happened to me in my child life. She

1 told me that she would rather me get some help.

2 So I just wanted to let you know that I love my
3 family, and I'd do anything for my family, Your
4 Honor.

5 It wasn't me doing these things, Your Honor.
6 It's simple. I had inside of me, Your Honor, that
7 when I raised up, when I was in -- I was abused all
8 my life, child molested all my life by all the
9 people, nine years old.

10 I should have told my mother about it, and it
11 was just -- sickness over me or something, but I hold
12 it in. It started affecting my relationship with my
13 family.

14 I just wanted to let you know, Your Honor, going
15 to prison is not going to help me. I need help.
16 That's -- I ask you on the mercy of the Court, Judge
17 Childs.

18 Please show mercy that you can get me some help,
19 because like I said, I took care of my family. I did
20 everything a father could do, except something is
21 wrong with me in my head, and I just need help.

22 THE COURT: Okay. Ms. Fent, what's your
23 response?

24 MS. FENT: Yes, Your Honor, Mr. McElveen said,
25 you know, people that kill other people rarely get 60

1 years. I think that some people might argue that
2 this is worse than murder.

3 He also said that the State rarely asks for 60
4 years, even in a murder case. I ask you to take that
5 into account, but I am asking for 60 years in this
6 case, and it is rare.

7 These young women are, as Mr. McElveen said,
8 professionals and strong, and while they say, you
9 know, that it won't do them any good for him to go to
10 jail for 60 years, they are going to make it through
11 this.

12 They are, you know, going to see how they are
13 strong people, and they are healthy, and that they're
14 beautiful people and that this sentence, this
15 punishment is no reflection upon them. It is
16 everything that he did to himself.

17 Dr. McKee, first of all, his job is not to say
18 what sentence is appropriate, so his, you know, last
19 letter with regard to probation, if the Court does
20 put him on probation, it is completely inappropriate
21 for Dr. McKee to pass on what the appropriate
22 sentence is.

23 He's just saying, "Gosh, you know, if the Court
24 does do this, you know, immediately get him help."

25 What he does indicate in his report is that this

1 defendant is at high risk to re-offend.

2 Now, let's take into account who this defendant
3 is going to go back to. He is going to go back to
4 the very young women that he has been violating for
5 years.

6 He is going to go back into an environment with
7 a mother -- with all due respect, this happened day
8 after day after day in her watch, and she is trying
9 to say that she knew nothing about this.

10 GINA BOYD: I didn't.

11 MS. FENT: Day after day after day.

12 The defendant's mother is -- at the plea, a
13 woman stood up and said that the defendant's own
14 mother went to her and said, "I suspect that my son,
15 Willie Green, is having sex with his daughters."

16 The environment that they're in -- these people
17 did nothing to help these young women, nothing. So
18 the environment that they're in, you know, he is at
19 high risk, not only to these young women, but to the
20 children that he had with them. He is at high risk
21 to re-offend to any other young children that are out
22 there.

23 He says that he was abused as a child, and I ask
24 you to differentiate between reasons this may have
25 happened and an excuse.

1 It may explain why this happened. You know, if
2 it is true that he was abused as a child, it is not
3 an excuse. He was an adult.

4 He specifically, when he started abusing them,
5 said to them, "You have become a woman now." So he
6 waits until they reach puberty before he starts
7 violating them.

8 The defendant and his family has asked for
9 mercy. He could have been charged for each and every
10 act, weekend after weekend, after weekend, three
11 daughters. Sixty years is mercy. That's all.

12 MR. McELVEEN: Your Honor, there is no evidence
13 that this ever happened outside the parameters of the
14 home, and those women are not there any longer.

15 I just pointed that out to say that he's not
16 going back to that environment.

17 Your Honor, I just again ask you to take the
18 victims' concern into consideration because they are
19 the victims.

20 THE COURT: All right. The Court would express
21 lots of concerns about this case. I've had it since
22 July of last year, and it has been on my mind a lot
23 since then.

24 I try to have independent review, just to assist
25 me with this, like going through Dr. McKee, and with

1 looking at his evaluation and the results, I'm quite
2 troubled that his statement will say that based on
3 his 30 years' experience of evaluating and treating
4 sex offenders, it is his opinion that he meets the
5 definition of a sexually violent predator.

6 Let me explain that to you, Mr. Green. Whatever
7 period of incarceration that the Court would give
8 you, you might still be held in the Department of
9 Corrections because there is a civil commitment
10 process through the Attorney General's office.

11 Basically, bail what that is, is that if they
12 bring a case to a Circuit Court judge stating that we
13 believe there is probable cause that this person
14 might re-offend, they will ask that you go back in
15 jail, no matter how long your sentence has been,
16 whether it's been one day, one year, 25 years or 60
17 years.

18 They'll ask that you go back and stay there and
19 be psychologically evaluated for however long it
20 takes for them to not believe that you have the
21 propensity to commit such acts anymore.

22 So I just want to make you aware that this
23 statement in here may subject you to a whole other
24 process at some point in time.

25 I am concerned about -- while there should be

1 some treatment, there is no doubt that that would be
2 part of any sentence that the Court would give, that
3 they're indicating potentially you re-offending, you
4 know, because of your sexual deviance or paraphilia
5 that persistent attraction for young adolescent
6 females. That's your daughters or any other females.

7 So there is an issue here, no doubt. I had no
8 idea what the report would come back to state, but
9 you know, those are some substantial factors for the
10 Court to consider.

11 Other issues with respect to this case with my
12 recall to the last plea, when I spoke with each of
13 the daughters, some of the reasons that they
14 indicated, too, were that you were paying child
15 support at the time.

16 While I believe that -- you know, I'm happy that
17 they are forgiving and forgetting as part of their
18 spiritual growth, because that is part of a natural
19 healing.

20 The Court still has before it this issue about
21 what has occurred here and in this home. I asked the
22 mother last time, too, about "What did your daughter
23 say to you when she was impregnated?"

24 Apparently, it was told, "Oh, some guy from high
25 school, but he moved out of town."

1 Well, then you have the same daughter getting
2 pregnant again, and what's the excuse there? I mean,
3 there's got to be something that somebody gets put on
4 alarm at some point in time with respect to this.

5 Reading the reports, it indicates that while
6 your daughters are indicating to me here they're
7 close to you and things of that nature, somebody was
8 fearful. I mean, you know, put the fear in them to
9 not tell.

10 For you to tell them that your mother would kill
11 herself, you know, that's part of this whole
12 situation, as if you strapped them, literally, in the
13 home. Taking them one by one.

14 Apparently, the way it would occur is that they
15 would go to a mall, but one would remain back, but
16 one daughter getting impregnated twice.

17 There's -- you say all these things about what's
18 going on with you in the past, but then something
19 happens again. I mean, you repeat it several times,
20 but then to have one daughter get impregnated twice,
21 that is extremely troubling to me.

22 They are forgiving and forgetting, but I do
23 believe they are concerned about --

24 MR. McELVEEN: Excuse me, Your Honor. He asked
25 me a question.

1 THE COURT: Sure.

2 (Pause).

3 MR. McELVEEN: I'm sorry, Your Honor.

4 THE COURT: Okay.

5 And they are forgiving and forgetting, but you
6 still have the issues about the long-term medical and
7 genetic effects on the family, just by virtue of
8 these acts.

9 The violation of the privacy and the intimate
10 parent/child relationship, as well, just because this
11 is somebody that they would look up to.

12 They can, I would only suspect, would be fearful
13 of telling anybody and eventually, you know, thank
14 goodness they did come forward, because you know, we
15 may not know and may not have been able to bring it
16 to justice at this point.

17 It's a bad situation all around. I do want you
18 to get the help. I do want you to be put on notice
19 that this may not be the end of your process, because
20 you might be placed over into the A.G.'s program with
21 respect to sexually violent programs.

22 I do want the family to heal, but I am here to
23 deal with the factual scenario that's before me and
24 dealing with justice.

25 I do take the victims' issues into

1 consideration. I do take the fact that you're
2 pleading into consideration, but I also have to take
3 the gravity of this offense into consideration.

4 Sometimes while you're pleading, we do try to
5 get the benefit of some mercy. There are other times
6 that the facts and situations are such an egregious
7 nature that it just is what it is.

8 The fact that you're pleading is just the right
9 thing to do, not necessarily some great benefit for
10 it, so let me just take all of that into
11 consideration in the long run and pass judgment on
12 the sentence.

13 Anything else from anybody else?

14 MS. FENT: No, Your Honor.

15 THE COURT: Okay.

16 MR. McELVEEN: Your Honor.

17 THE COURT: Yes.

18 MR. McELVEEN: One thing that Willie and I did
19 discuss is, of course, he's aware of the Sexually
20 Violent Predator civil commitment process.

21 THE COURT: Okay.

22 MR. McELVEEN: He is aware that the outcome with
23 respect to that is largely -- or has a large factor
24 in that is his participation in his -- in his
25 counseling and the progress in his counseling and

1 things of that nature.

2 THE COURT: Okay. I mean, the sooner you get
3 help, the better, but some of that help will
4 potentially be within the Department of Corrections.

5 MR. McELVEEN: Oh, right.

6 THE COURT: Yes.

7 (Pause).

8 THE COURT: How much time has he spent
9 incarcerated? Was it just since July 31st?

10 MR. McELVEEN: I think he had two months prior
11 to the that, Your Honor, before he bonded out.

12 THE COURT: Okay.

13 MR. McELVEEN: Isn't that right?

14 (Pause).

15 THE COURT: Okay. For Mr. Green, the indictment
16 number 2007-GS-40-4015, criminal sexual conduct with
17 a minor, second degree, you're sentenced to the State
18 Department of Corrections for 20 years.

19 For indictment number 07-GS-40-4014, criminal
20 sexual conduct with a minor, second degree, you'll be
21 sentenced to the State Department of Corrections for
22 20 years. Criminal sexual conduct, third degree,
23 indictment number 07-GS-40-4013 --

24 (Victims' mother crying).

25 You're sentenced to the State Department of

1 Corrections for ten years, and for the incest,
2 indictment numbers 07-GS-40-4012, the State
3 Department of Corrections for ten years.

4 There will be sex offender counseling and
5 treatment.

6 Just so you'll know, the criminal sexual conduct
7 with a minor, second degree, indictment number
8 07-GS-40-4014 will run consecutive to the indictment
9 number 07-GS-40-4015, criminal sexual conduct third
10 degree, 07-GS-40-4013 for ten years runs consecutive
11 to criminal sexual conduct, third degree, and the
12 incest will run for ten years concurrent, so it's a
13 total sentence of 50 years.

14 (Victims' mother crying).

15 (Whereupon, the proceedings were concluded.)
16
17
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25

CERTIFICATE OF REPORTER:

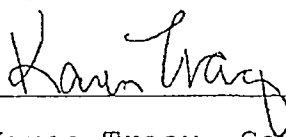
STATE OF SOUTH CAROLINA)

)

COUNTY OF Richland)

I, Karen Tracy, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial
of the captioned case, relative to appeal, in the
General Sessions Court for Richland County, South
Carolina, on the 31st day of July, 2008 and the 30th
day of April, 2009.

Signed this 1st day of June, 2010.



Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

FORM 5

STATE OF SOUTH CAROLINA

County of RICHLAND

IN THE COURT OF COMMON PLEAS

Willie Marvin Green

*334538

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2010 APR 30 PM 2:34
JANET H. WILSON
C.C. P. & B. BRIDGE

INSTRUCTIONS TO READ CAREFULLY

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

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

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

1. Place of detention Perry Corr. Inst.
2. Name and location of Court which imposed sentence Richland County
General sessions
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-65-40-4013, 4014, 4015

[illegible]

FOILOG 04003 221

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-29-09 50 yrs IN Prison
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered And@ to (7), state your reasons for not so appealing:
- (a) Attorney Did Not File AN Appeal

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INVOLUNTARY GUILTY PLEA
- (c) VIOLATION OF DUE PROCESS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED MEMORANDUM'S OF LAW
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? 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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) BECAUSE this is my first PCR and
 (b) these issues can only be raised in
 (c) PCR

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

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

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

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

- i. George R. McElveen, III
2229 Bull Street
 ii. Columbin, S.C. 29201
 iii: _____

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

- i. PLEA & SENTENCING
 ii. _____
 iii. _____

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

GUILTY PLEA VACATED
REVERSED AND REMANDED FOR A NEW
FAIR TRIAL

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, Willie Green, 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.

Willie M. Green

SWORN to and subscribed before me this 14th
 day of April, 2010.

Stewart Mulvaney (L.S.)
 Notary Public

My Commission Expires: November, 2016

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

I, Willie Green, 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.

Willie M. Green
Applicant

SWORN or affirmed to and subscribed before me this
19th day of April, 2010.

Stewart M. Mantley
Notary Public

My Commission Expires: November 7, 2016

RICHLAND COUNTY
FILED
2010 APR 30 PM 2:36
JEANNETTE W. MCBRIDE
Clerk & S.

INEFFECTIVE ASSISTANCE OF TRIAL/PLEA COUNSEL

[STANDARD OF REVIEW]

STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984) is the controlling and instructive case handed down by the United States Supreme Court, whereby STRICKLAND sets forth parameters that outline in depth guidelines for any reviewing court to use while analyzing constitutional claims framed within the broad context of "ineffective assistance of counsel". The United States Supreme Court squarely decided and announced that the sixth amendment mandates that "[A]n accused defendant is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure the trial is fair" *Id.* at 685.

Further, "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the adversarial process that the trial cannot be relied upon as having produced a just result" *Id.* at 688.

When an attorney fails to meet these guidelines and standards, the attorney is said to have rendered deficient performance.

Therefore, general guideline rule for claims based on "ineffective assistance of counsel" require the applicant at Post-Conviction Relief demonstrate by the preponderance of the evidence that; (1) Counsel failed to render reasonably effective assistance under prevailing norms, and (2) that the applicant was prejudiced by that deficient performance. STRICKLAND, *supra*; JUDGE v. STATE, 321 S.C. 554, 471 S.E.2d 146 (1996).

Further, STRICKLAND, assigns some of the specific constitutional duties required to be performed by an attorney from the scope of the sixth amendment, such as but not limited to; (a) "Assistant to the defendant," which is interwoven with (b) "to advocate the defendant's cause and the more particular duties of (c) to consult with the defendant on important decisions and (d) to keep the defendant informed on important developments in the course of the prosecution." *Id.* at 466 U.S. 688.

Those constitutional duties generally specified to the United States Supreme Court are in the least, just as critical in the context of a "guilty plea", as they are in preparing for trial.

Especially when counsel has chosen not to investigate evidence alledged to exist and potential defences that mat realistically mitigate the offence (s) for wñich his/her client is charged.

Our State Courts have repeatedly reconized the rule that where counsel articulates a valid strategy reasoning for his or her actions or inactions, he or she should not be found ineffective. see ROSEBORO V. STATE, 317 S.C. 292, 454 S.E.2d 312 (1996); UNDERWOOD V. STATE, 309 S.C. 560, 425 S.E.2d 20 (1992); STOKES V. STATE, 308 S.C. 456, 419 S.E.2d 778.

Further, " Courts must be wary of second guessing counsel's trial tactics, and where counsel articulates a valid stratigic reason for employing such stradegey, such conduct is not ineffective assistance of counsel". see WHITEHEAD V. STATE, 308 S.C. 119, 417 S.E.2d 529 (1992).

Quoting from STRICKLANS v. WASHINGTON, it was articulated that "Representation as an art, and an act or omission that is unprofessional in one case may be sound or brilliant in another". *Id.* at 691.

Therefore, the applicate in Post-Conviction Relief (hereinafter PCR) "must overcome the presuption that, under the circumstances, the challenged actions (or inactions) might be considered sound trial stratigy".

Counsel cannot shẽild against his/her decisions not to pursue pote-ntial defences based on applicable case law, before he/she recommended and advocated a guilty plea.

LIST OF LIES TOLD BY Mr. GEORGE McELVEEN

- 1). Told green and his family that Judge Childs would give him a light sentence if he pled guilty.
- 2). Would not serve more than 5 years if he pled guilty.
- 3). That it would be an open plea from 1-5 years.
- 4). That he would file a Direct Appeal once the motion to reconsider was ruled on. Under the rules you only have 10 days. McElveen said the motion would not stop the Direct Appeal.
- 5). That he would need \$2,500.00 more dollars to get Mr. Green an Independent Private Evaluation, which Mr. Green never got.
- 6). That Judge Childs stated he might give him probation and time served. (Jail Time).
- 7). Told Mr. Green and his family a trial would be in his best intrést because Judge Childs would give him a light sentence and jail time.
- 8). Told him to admit that he was a "Paraphilia", and would get the necessary treatment to overcome his disease, staténg that would make Judge Childs give him a lighter sentence.

PART II

COMMUNITY SUPERVISION PROGRAM

DUE PROCESS VIOLATION

UNKNOWNING AND INVOLUNTARY PLEA

INEFFECTIVE ASSISTANCE OF COUNSEL

The due process clause of the United States Constitution requires that a guilty plea must be entered voluntarily and knowing. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1964). In order for a defendant to knowingly and voluntarily plead guilty, he must have full understanding of the consequences of his plea, that includes direct consequences i.e., Consequences that have a definite, immediate and largely automatic effect on defendant's punishment, see State v. Hazel, 275 S.C. 392, 271 SE2d 602 (1980). In Hazel, our State Supreme Court held that her plea was not knowing because it was entered without an understanding of the mandatory punishment to which she was pleading. It was a plea entered in ignorance of its direct consequences and therefore invalid.

Here applicant argues that the State's Community supervision Program (hereinafter 'CSP') is a direct consequence of his criminal conviction. Also that his plea was entered involuntarily and unknowingly and in violation of due process because it was without understanding of the mandatory punishment of his plea and the CSP.

In eliminating parole for violent offenders in 1996, the legislature enacted a scheme of determinate sentencing to be followed by periods of mandatory community supervision see S.C. Code Ann. §24-21-560 "imposition of the CSP is mandatory and thus has a definite, immediate and largely automatic effect on defendant's punishment" see People v. Catu, 4 N.Y. 3d 242, 245, 792 N.Y.S. 2d 887, 825 N.E. 2d 1081 (Ct. App. 2005).

The CSP is significant; upon immediate release from the underlying term of imprisonment, a defendant must be furnished with a written statement setting forth the conditions of the CSP. In addition to supervision by and reporting to a parole officer, the CSP requires compliance with any conditions to which a parolee may be subject to including, for example, monthly fee, electronic monitoring, a curfew, restrictions on travel, and substance abuse testing and treatment. Moreover, the CSP requires a defendant, upon release from determinate sentence, to serve the remaining 15% balance of the 85% "no parole sentence" on community supervision. See State v. McGrier, Opinion No. 26489 5/12/08. A defendant must be made aware of this mandatory punishment to meet the requirement of due process. See People v. Hill, 9 N.Y. 3d 189, 879 N.E. 2d 152, 849 N.Y.S. 2d 13 2007 N.Y. Slip Op. 08782.

In the State of South Carolina the CSP as defined in S.C. Code Ann. §24- 13-100 Supp. 2001) is a collateral consequence of sentencing see Jackson v. State, 349 S.C. 62, 562 SE2d 475 (S.C. 2002). Although a defendant pleading is not entitled to explanation of possible collateral consequences i.e., Consequences that are peculiar to individual and generally result from actions taken by agencies courts does not control.

The constitutional defect lies in the plea itself not in the resulting collateral consequence of sentencing.

Because defendant pleading guilty to a determinate sentence must be aware of the CSP component of that sentence in order to knowingly and intelligently choose among alternative courses of action. The failure of a court to advise of CSP requires reversal of conviction.

[CONCLUSION]

Applicant contends that his guilty plea was entered into involuntarily and unknowingly and in violation of due process because the trial court or defense counsel was required to advise him that his sentence would include a mandatory term of community supervision and the mandatory punishment it carries. A guilty plea entered in ignorance of its direct consequences and mandatory punishment is invalid. State v. Hazel, S.C., 271 SE2d 602 (1980). U.S.C.A. Amend. 14.

(II)

TRIAL COUNSEL LIED TO INDUCE APPLICATES GUILTY PLEA

Applicate ("hereinafter Green") contends that his guilty plea was based on lies to induce him to plead guilty.

1). First Green's attorney ("hereinafter McElveen") was ineffective and should a deficient performance when he induced Green's guilty plea based on lies. see U.S. v. Giardino, 797 F2d 30 (1st 1986).

A). McElveen told Green and his family that he would receive a light sentence maybe a couple years, with his jail time but no more than 3-5 years in an open plea.

Green and his family will testify at P.C.R. to the lies that induced Green to plead guilty.

B). Testimony will be from the following family members: Jeana Boyd, Minor 1 Erlean and Selina Boyd.

III

McELVEEN LIED ABOUT INDEPENDENT EVALUATION

1). At the plea hearing in front of the honorable Judge Childs, on July 31, 2008, Judge Childs ordered an evaluation before she pronounced sentence.

When the trial court orders an evaluation, it is through the Department of Mental Health and it is charged to the state. McElveen told Green's wife that he needed \$2,500.00 more dollars for a private Independent Evaluation, which Green never received.

After receiving a copy of the court's ordered evaluation on March 14, 2009, McElveen was ineffective and showed a deficient performance when he failed to get a private evaluation to refute the states evaluation. After charging Green's family \$2,500.00 dollars to do so.

If he would have done so there is a reasonable probability the outcome would have been different. see STRICLAND v. WASHINGTON, 466 U.S. 668, 687-88, 104

S.Ct. 2052, 2064-74 80 Led2d 674 (1984).

McElveen knew Gren did not/could not understand the proceedings and refused to show or discuss the psychiatric report. Green repeatedly asked for or asked to be explained the psychiatrist's findings, that he did not understand what was going on.

McElveen wrote Green's diagnosis and what he should tell the Judge. McElveen got tired of trying to explain the Dr.'s findings to Green because Green could not understand what was going on, therefore, McElveen should have asked for a guilty, but mentally ill hearing/plea.

§S.C. Code 44-23-410, states that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subject to trial. see STATE v. BELL, 293 S.C. 391, 396, 360 S.E.2d 706 (1987); JETER v. STATE, 308 S.C. 230, 232, 417 S.E.2d 594 (1992). In STATE v. PASSARO, 350 S.C. 499, 567 S.E.2d 862 (2002), it is held that the standard to determine competency is whether the defendant can understand the nature of the proceedings. (Green did not understand the nature of the proceedings whatsoever).

§ 17-24-20, which defines guilty but mentally ill as:

A). A defendant is guilty but mentally ill if, at the time of the crime, he had the capacity to distinguish right from wrong, but because of mental disease or defect, he lacked the capacity to conform his conduct to the requirements of the law.

Green contends that during the Forensic evaluation with Dr. McKee on 2-20-09, he informed Dr. McKee that he could not read or write; that he did not know what was going on with his case; that McElveen got mad at him because he could not understand anything he tried to explain to him, and could not understand why he was there for an evaluation.

Dr. McKee has a PhD. in Psychological Services, and should have made the court aware that Mr. Green did not understand what was going on, during the evaluation on 2-20-09 or that he could not help his attorney with his case and he lacked the capacity to understand the nature of the proceedings against him. That's why the Forensic Evaluation Audio Tape of the meeting between Green and Dr. McKee will be Subpoened to be played at Green's P.C.R. hearing.

McElveen should have requested the Audio tape of the Forensic Evaluation hearing to show the court Green's mental capacity.

[CONCLUSION]

Due process prohibits the conviction of a person whom is mentally incompetent; right cannot be waived by guilty plea. U.S.C.A. Amend. 5,14. see Criminal Law 373(2); Mental Healthm 432 and U.S. v. Bishop 350 U.S. 961; 76 S.Ct. 440, 100 LEd 835 (1956).

Green contends his counsel was ineffective and should a deficient performance under the STRICKLAND, standard when he failed to get an independent evaluation as he promised Green and his family, especially since Green and his family paid an additional \$2,500.00 dollars to do so.

RECEIPT

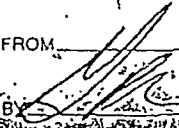
DATE 2/17/09 No. 805869

FROM Regina Bay \$2,500.00

Two thousand five hundred DOLLARS

☐ FOR RENT Attorney's Fees

☒ FOR

ACCT.		☒ CASH	FROM	TO
PAID	<u>2,500.00</u>	☐ CHECK		
DUE		☐ MONEY ORDER		

BY [Signature]

1152

I AM COMMITTED
TO DO WHATEVER,
I CAN TO GET
TREATMENT AND
OVERCOME MY
DISEASE

Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1728 Main Street, Suite 110
Columbia, SC 29201
803-935-5685

March 14, 2009

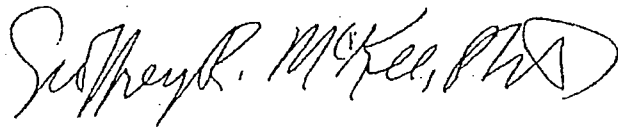
George McElveen, Esq.
2229 Bull Street
Columbia, SC 29201

Dear Mr. McElveen:

Pursuant to your request, below is a summary of my forensic psychological evaluation of **Willie Greene** conducted on 2/20/09. He has been charged with multiple counts of Criminal Sexual Conduct with a Minor involving three step-daughters. The evaluation consisted of a review of police and legal records, an extended clinical interview, administration of psychological tests (I&O, PAS), and scoring of measures of sexual recidivism risk (S99, MnSOST-R, NJ-RRAS), as well as general probation risk (SC Department of Probation, Parole, and Pardon Services-Parole Risk Assessment [SCDPPPS-PRA], Salient Factor Score [SFS]):

- His personal history, clinical presentation, and psychological testing are consistent with a clinical diagnosis of Alcohol Dependence, Cannabis Dependence and History of Polysubstance Dependence (heroin, cocaine);
- His evaluation results suggests that he suffers from a sexual deviance disorder (paraphilia) of persistent sexual attraction to young adolescent females;
- The NJ-RRAS was developed in New Jersey to aid the court in determining which sex offenders, based on level of risk (Low, Moderate, High) should be placed on the State's Sex Offender Registry. Men with NJ-RRAS scores similar to Mr. Greene's fell in the Moderate Risk category: the men in the category were required to have their names placed on the state's Sex Offender Registry;
- Men with similar scores as Mr. Greene's on the S99 and MnSOST-R fell in the Moderate to High Risk category for re-arrest or conviction of a subsequent sex offense;
- Men with similar scores as Mr. Greene's on SFS and SCDPPPS-PRA fell in the category of having a low to moderate likelihood to successfully complete probation without a technical or substantive violation of their supervision; on the SCDPPPS-PRA, 45% of men with similar scores to Mr. Greene's were re-arrested for a new offense and 9% were re-arrested for a violent offense.
- Based on my 30 years' experience of evaluating and treating sex offenders, it is my opinion that Mr. Greene does meet SC's statutory definition of a sexually violent predator (SVP).

Please contact me at (803) 935-5685 or at (803) 463-7573 (cell) if you have questions regarding this report or need further information about Mr. Greene.

A handwritten signature in cursive script that reads "Geoffrey R. McKee, PhD". The signature is written in dark ink and is positioned above the printed name.

Geoffrey R. McKee, PhD, ABPP (Forensic)
Clinical Professor, Department of Neuropsychiatry
University of South Carolina School of Medicine

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
WILLIE GREEN, #334538	)	CASE No. _____
APPLICATE,	)	
	)	
V.	)	
STATE OF SOUTH CAROLINA,	)	
RESPONDENT,	)	

MOTION FOR AN ORDER TO RELEASE AUDIO TAPE
FROM FORENSIC PSYCHOLOGICAL EVALUATION

Applicat~~e~~ Green respectfully motion's the Honorable Court
to order release of audio tape from:

Forensic Psychologist Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1728 Main Street, Suite 110
Columbia, S.C. 29210

This evaluation was ordered on 7-31-08 by the Honorable Judge
Childs. The evaluation was held on 2-20-09.

This audio tape will clearly prove Green lacked the capacity
to distinguish right from wrong, lacked the capacity to understand
the nature and object of the proceedings against him and also,
lacked the capacity to help his counsel in preparing his defense.

IV

UNKNOWNING AND INVOLUNTARY PLEA

The record shows that Green was not sentenced immediately after the acceptance of his plea. Instead, the court ordered a Forensic evaluation and sentenced was pronounced on 9-30-09.

At the time of the plea, it was Green's understanding, he would receive probation and time served, relieing on Mr. McElveen's advise.

The record reflects that Judge Childs was going to give Green probation. He hadalrady been interviewed for probation by Rocky Reinfro of Richland County Probation office. see Plea transcripts.

Green contends that his plea was involuntary, unknowingly, and unintelligently entered because he was lead to believe by McElveen, Judge Childs and Rocky Reinfro, that he was to receive probation and time served,

In order for Green's plea to be knowingly, voluntarily, he must have full understanding of his plea. see RODDY v. STATE, 339 S.C. 29, 528 S.E.2d 418 (S.C. 2000

V.

INEFFECTIVE ASSISTANCE DUE TO FAILURE TO
INVESTIGATE BEFORE ADVISING TO PLEA

Applicate (hereinafter Green) contends his guilty plea was involuntary and unknowingly entered because his trial counsel (hereinafter McElveen) failed to investigate that the victims (hereinafter Courtney Boyd, Erleen Boyd and Selns Boyd) knowingly used false testimony to lead police and the Solicitor's Office in to believing that Green knowingly used manipulation and force to perform sexual acts with him.

Minor 1 Minor 3 , and Minor 2 will testify at PCR that there is two reasons why they used false testimony in their statements: 1) They used false information in their statements to protect their mother Jeona Boyd; 2) That they were coerced by the police and the Richland County Solicitor's Office because they were told if they wanted to hear they would also be arrested.

In Strickland v. Washington, 466 U.S. 668, 80 LE2d 674, 104 S.Ct. 2052 (1984). The U.S. Supreme Court has held: Counsel has a duty to make reasonable investigations or to make reasonable decision that makes particular investigations unnecessary. Actual ineffectiveness claims alleging a deficiency in attorney performance are subject to general requirement that defendant affirmatively prove prejudice.

To succeed on a Sixth Amendment claim of ineffective assistance of counsel, defendant must show there is a "reasonable probability," which is a probability sufficient to undermine confidence in the outcome, that but for counsel's unprofessional errors, result of proceeding would have been different. See Strickland, supra; U.S.C.A. Const. Amend. 6.

Had trial counsel McElveen investigated the victims statements and advised Green to go to trial to present Green's defense to the jury that the victims tried to cover up the truth there is a reasonable probability the outcome would have been different instead of advising Green to plead guilty to the Maximum penalty of 50 years in prison clearly showing prejudice.

CONCLUSION

Green's case should be remanded for a New Trial based on Attorney McElveen ineffectiveness.

Exhibit 4

Feb. 10, 2010

To whom It may Concern:

I have finally come forth and told the truth that my father was provoked into those sex acts. I lied to the police to protect my mother and I lied because the police and Solicitors office coerced me in the statement.

Minor 1

Exhibit 5

2/10/2000

Two Whom IT May Concern:

I finally told the truth that it was not all my father's fault what happened. I had lied to protect my mother and I was coerced by the police and the solicitor.

Minor 3

EXHIBIT 6

2-26-2010

To whom It may concern:
I Finally told the truth
that my father was provoked into
the sex act. I lied to the Police to
protect my mother. I lied because
the police and solicitor coerced
me into my statement.

Minor 2

The State of South Carolina

W. Barney Giese
SolicitorJohn P. Meadors
Deputy SolicitorSOLICITOR
Fifth Judicial Circuit
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29202Phone
(803) 576-1800

Fax (803) 576-1718

on calendar

STATE OF SOUTH CAROLINA,

VS.

IN THE COURT OF GENERAL
SESSIONSWillie Green

Defendant

NOTICE FOR COURT

You are hereby notified that your case(s) has (have) been scheduled for a trial in Richland County General Sessions Court on Mon. June 23,
2008 at 9:00 A.M. You will receive no other notice. If you fail to appear on this date a bench warrant will be issued for your arrest. You must contact your attorney as soon as possible regarding this notice.

Willie M. Green
Defendant's SignatureM. Fent
Solicitor's Signature6-9-08
Date

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2010-CP-400-871
GREEN Willie M, # 334538,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 30, 2010, would respectfully show this Court:

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 George McElveen, Esquire. On September 30, 2009, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: CSC 3rd Degree, CSC 2nd Degree (2 counts) - (07-GS-40-4013;14;15). According to the South Carolina Department of Corrections, the Applicant is serving a 50 year sentence for "Crim Sex Cond W/minor(2nd.)"

II.

Attached and/or 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

RICHLAND COUNTY
 FILED
 2010 JUL 23 PM 10:08
 JEANETTE W. McBRIDE
 C.C.P. & C.S.

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.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective 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, Charles T. Brooks, III, Esquire regarding when the hearing should be set.¹

Respectfully submitted,

HENRY DARGAN McMASTER
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

July 20, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

1 STATE OF SOUTH CAROLINA) IN COMMONS PLEAS COURT
2 COUNTY OF RICHLAND)
3 WILLIE GREEN,)
4 PLAINTIFF.)
5)
6 -V-)
7)
8 STATE OF SOUTH) TRANSCRIPT OF RECORD
9 CAROLINA)
10 DEFENDANT.) 2010-CP-40-0871
11)
12)
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25)

MAY 23, 2012

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CAYCE L. MANNING, JUDGE;

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

FOR THE PLAINTIFF:

MR. NEWMAN, ESQ.

FOR THE DEFENDANT:

MR. CORNEY, ESQ.

I-N-D-E-X

PCR: 3

CERTIFICATE OF REPORTER: 28

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

1 (The following proceedings were held on
2 May 23, 2012.)

3 MR. CORNEY: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 MR. CORNEY: Your Honor, the State would call PCR
6 Willie Green, Docket Number 2010-CP-40-0871. Mr. Green was
7 you true bill indicted at the December 2007 term of the
8 Richland County Grand Jury for incest, criminal sexual
9 conduct in the third degree, and two counts of criminal
10 sexual conduct with a minor in the second degree. He was
11 represented by George McElveen on the charges.

12 Mr. Green pled guilty July 31st, 2008 before Judge
13 Childs to the charges as was indited. Sentencing was
14 referred at that time. He appeared again for sentencing
15 April 30th, 2009 at which point he was sentenced to
16 concurrent terms of ten years for incest and criminal sexual
17 conduct in the third degree to be followed consecutively by
18 two 20-year terms for the criminal sexual conduct in the
19 second-degree charges for an aggregate 50-year sentence.

20 Mr. Green did not have a direct appeal. He filed
21 a timely PCR application April 30th, 2010. He is
22 represented today by Mr. Brian Newman.

23 THE COURT: Mr. Newman?

24 MR. NEWMAN: Thank you, Judge Manning.
25 We're going to go ahead and get started here. We're going

1 to call Willie Green --

2 THE COURT: Come around, Mr. Green.

3 MR. NEWMAN: -- to the stand. And as he's walking
4 up, just provide somewhat of -- some additional procedural
5 background, Your Honor.

6 I'm here, for the record, Brian DeQuincy Newman
7 appearing behalf of Willie Green.

8 THE COURT: Well, let me swear him.

9 THEREUPON,

10 WILLIE GREEN,
11 after having been duly sworn, testified as follows:

12 THE COURT: All right.

13 MR. NEWMAN: As you will recall, Your Honor, this
14 is a -- a --

15 THE COURT: And -- go ahead.

16 MR. NEWMAN: This is a case that's been --

17 THE COURT: Go ahead.

18 MR. NEWMAN: -- fairly well known here in the
19 courthouse. If you will recall, I was actually appointed to
20 represent Mr. Green on his Motion to Reconsider before Judge
21 Childs. After that was submitted to Judge Childs, of
22 course, the Motion to Reconsider, it was ordered that the
23 time would remain same since then.

24 In speaking with Mr. Green, he told me that he
25 would like to file that PCR. That application was timely

1 filed. As a result, Your Honor, we're here primarily on two
2 claims. First, ineffective assistance of counsel. In
3 addition to that, an involuntary guilty plea that was pled
4 by Mr. Green.

5 Although those are going to be two different
6 arguments here, they do run the same common theme, and that
7 is that Mr. Green did not necessarily possess the mental
8 competence or the mental capacity to go forward in these
9 prior proceedings. And I believe that will be shown here
10 today in testimony that we're about begin.

11 I would like the Court to take notice that Mr.
12 Green is little bit slow to respond to lot of questions.
13 You know, as result of that, I've spent a significant amount
14 of time with him ensuring that he understands what is going
15 forward here today.

16 But with that said, we are prepared to move
17 forward, and I have advised him of the risk of PCR and that,
18 although we are requesting that a new trial be held for Mr.
19 Green, that he does run the risk of an additional ten years
20 of sentence in the event that this PCR were granted and that
21 he's given a new trial if he were convicted of that charge.

22 With that said, Your Honor, you know, we are
23 seeking to include mental competency and we know that that
24 is not a claim for PCR, but obviously, it's not just an
25 incapacity to go forward with the guilty plea is, which is

1 why we're here, Your Honor.

2 With that said, we'll go ahead and begin the
3 testimony for Mr. Green.

4 DIRECT EXAMINATION

5 BY MR. NEWMAN:

6 Q Mr. Green, if you would, please state your name for the
7 record.

8 A May name is William Green, sir.

9 Q And, Mr. Green, we are here today for your PCR hearing;
10 is that correct?

11 A Yes, sir.

12 Q And do you feel that you've had an ample amount of time
13 to discuss this matter with me prior to this hearing.
14 here today?

15 A Yes, sir.

16 Q All right. Mr. Green, how old are you?

17 A I'm 50 years old, sir.

18 Q And did you graduate high school?

19 A No, sir.

20 Q What was the last level of schooling that you
21 completed?

22 A Seventh grade.

23 Q And do you have any sort of learning disability or is
24 there anything that you need to make the Court aware
25 of?

1 A Yes, sir. I can't read and write.

2 Q But you do understand what we're going through here
3 today; is that correct?

4 A Yeah.

5 Q The hearing we're going through?

6 A Yeah. You had discussed it with me.

7 Q Okay. I think you'll have to speak up for the
8 microphone?

9 A Yes, sir.

10 Q All right. Now, were you working prior to your
11 conviction?

12 A Yes, sir.

13 Q And where were you working?

14 A I worked at Piccadilly's.

15 Q And what sort of tasks did you have there?

16 A Cooking.

17 Q Just some very basic tasks that doesn't involve any
18 reading or writing or anything like that?

19 A No, sir.

20 Q So this -- thank you, Mr. Green.

21 Moving forward, who represented you on the charges
22 that we're here for today?

23 A Mr. George McElveen, sir.

24 Q And when did you retain Mr. McElveen?

25 A Seven months before I got out of jail.

1 Q Seven months.

2 You need to speak a little louder, Mr. Green.

3 A Sir?

4 Q Can you speak a little louder?

5 A Seven months.

6 Q Okay. And tell me about your -- your interactions with
7 Mr. Green (sic) and just kind of walk us through from
8 your initial meeting with him through the end of -- of
9 your representation.

10 A Okay. I hired Mr. McElveen to represent me, and I went
11 to his office and -- after I got out of jail and to ask
12 him about representing me.

13 So he said he will take my case for \$10,000. So
14 he took my case. So I been going to roll call and then
15 going by his office to see if he can handle my case,
16 what's going on with my case. But he never went over
17 none of my case with me, my filings or nothing. He
18 just -- I asked him -- one time I went to his office
19 and he told me that the Solicitor got my files and he
20 don't have my files and he can't go over it with me
21 right now until I get the files from the Solicitor's
22 office.

23 Q Uh-huh.

24 A Then I kept going to his office and he -- he was -- he
25 wasn't there. And I kept asking him about what's going

1 on with my case. He said he don't know about my case.

2 And then what I do -- then I went to the plea
3 hearing the first time, and they revoked my bond and
4 throwed me in -- throwed me in jail. And I was in the
5 county jail for a year. And then I was trying to get
6 him to see about my case, but I was going through my
7 wife with him because I couldn't read and write. So I
8 told him to -- I told my wife to go by his office and
9 ask him why he didn't come in to see me to go over my
10 case.

11 So he was telling my wife, he -- he will get down
12 there to see me, but he never come. And then one time
13 he came down there to see me, and he came to pick up my
14 checks, what I had down at the county jail. And then
15 that's the first time he came to see me down at county
16 jail.

17 And the second time he came down there to get
18 power of attorney over me -- over me for my -- to cash
19 the checks what I had. But he never went over none of
20 my case with me.

21 Q So -- so, how many times did you meet with
22 Mr. McElveen?

23 A Two times in the county jail. And when I went to
24 trial, he said he was going -- told my wife when I go
25 to trial, he'll meet me down at the basement down here

1 to the courthouse and then to see me down before I
2 go -- go to plea.

3 Q So when he said he was meeting with your wife, did he
4 know about your -- your -- your inability to read and
5 to comprehend certain things?

6 A Yes, sir. I told him I couldn't read nor write.

7 Q So did he ever attempt to explain to you the charges
8 that were against you.

9 A No, sir.

10 Q What about any discovery, did you go over any discovery
11 in your case?

12 A No, sir.

13 Q So ultimately, what -- what did you know about your
14 case?

15 A I just -- it was -- I was using my wife for the in
16 between me and him because I couldn't read and write.

17 And my wife was telling me what he said, and --

18 Q And so --

19 A -- telling me about my case.

20 Q So, essentially, did you ever get the opportunity to
21 learn anything about your case, the charges that were
22 presented against you?

23 A No, sir.

24 Q So from what you said earlier then, the primary time
25 that you-all had interaction about this case was your

1 actual plea date?

2 A Was when my plea date was?

3 Q That was the main time that you-all discussed this --

4 A Yes, sir.

5 Q -- discussed the case?

6 A Yeah. When I got in front of the judge, he told me
7 that he was going to meet me down there to go over my
8 thing -- my case with me, but he never came. And then
9 the only time I saw Mr. McElveen and when I got in
10 front of the judge. When I got in front the judge,
11 that's when I saw him on my -- on my plea.

12 Q So -- so what did you think was happening that day?

13 A He told me that -- he told my wife to tell me that, sit
14 down at the county jail, that he trying to get me some
15 time under my belt because he got me in the right -- he
16 got me in the right judge, and he going to get me
17 probation.

18 Q So -- so did you -- so once he actually got in for the
19 plea date, did -- did you know what was going on that
20 date?

21 A No. I just know my wife told me he said I was going to
22 get probation.

23 Q So, when the proceeding actually started -- when your
24 guilty plea actually started, did you understand all
25 the questions that were being asked of you?

1 A Sir?

2 Q Did you understand all the questions that were being
3 asked of you once the guilty plea actually started?

4 A No, sir.

5 Q And at all during this proceeding, did you hesitate?

6 A Yes, sir. I hesitated and asked Judge Childs I
7 couldn't -- I don't understand and can I talk to my
8 attorney. So she let me went over there and talk to my
9 attorney. So he told me that go on back and -- and go
10 with the plan because Judge Childs getting mad at you,
11 and I'm trying to get you probation. I'm getting you
12 probation.

13 So that's what I went and told Judge Childs that
14 that I understand everything.

15 Q So this is during the pauses that were noted --

16 A Yes, sir.

17 Q -- in the transcript?

18 So, you know, were there times and they were
19 reflected in the transcript where you did indicate to
20 the Judge or to the Court that you did not know what
21 was going on?

22 A Yes, sir.

23 MR. NEWMAN: Excuse me.

24 BY MR. NEWMAN:

25 Q So ultimately, why did you continue to the plea? Why

1 did you continue going through it and answering
2 questions?

3 A Because I trusted Mr. McElveen and he told me that --
4 that -- that he was going to represent me and he was
5 going get me probation. So I trust in him, on my
6 counsel's advice.

7 Q So were you under the impression that this was some
8 negotiated plea?

9 A Yes, sir.

10 Q And ultimately, once it was actually concluded, did you
11 request an appeal --

12 A Yes.

13 Q -- on this case?

14 A When I got my -- Judge Childs gave me my time, I told
15 my wife. And when I was in county jail, I said, Judge
16 Childs told me before I left out the courtroom that I
17 got ten days to file my appeal. So I told my wife to
18 go down to Mr. McElveen's office and tell him to file
19 that appeal for me. And he never did.

20 Q Mr. Green, is there anything else that you would like
21 to tell the Court?

22 A Yes, sir.

23 I'd like to tell the Court that if I know that my
24 counsel was lying to me, I would never plead guilty. I
25 would have went to trial.

1 And on my appeal, I did ask him for appeal. And
2 he didn't never give me the appeal.

3 And then on the third, he never went over my files
4 or nothing with me.

5 Q Thank you, Mr. Green.

6 THE COURT: All right. Mr. Corney?

7 MR. CORNEY: Just very briefly, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. CORNEY:

10 Q Mr. Green, when you pled guilty, Judge Childs asked you
11 if you knew what were you doing and whether you had had
12 enough time to talk to your attorney and he even --
13 you'd been advised of the sentences, constitutional
14 rights.

15 You said you understood all of that, right?

16 A Yes, going on my counsel advice.

17 Q Okay. And you didn't get sentenced that day when you
18 entered the plea, did you?

19 A Talking about when entered the plea?

20 Q Yeah. You didn't get sentenced at that time. You came
21 back and got sentenced at a later date?

22 A No. I got sentenced that day.

23 Q You did? You didn't -- you didn't, maybe, take a
24 break, come back after getting evaluated and get
25 sentenced at that time?

1 A No. That was the first plea I had. And they valuated
2 me. That's the first plea I had and Judge Childs
3 ordered me a evaluation.

4 MR. CORNEY: I don't have in further questions,
5 Your Honor. Thank you.

6 THE COURT: Anything further, Mr. Newman?

7 MR. NEWMAN: Nothing further, Your Honor.

8 THE COURT: You said that Judge Childs ordered
9 that you be evaluated?

10 MR. GREEN: That what she said -- ordered for
11 evaluation.

12 THE COURT: And was he evaluated or is he --

13 MR. CORNEY: Your Honor, I was going to get into
14 that through -- through counsel but --

15 THE COURT: Okay. That's fine. All right.

16 You may step down, sir.

17 There's a second part of this. All right. Mr.
18 Newman, call your next witness.

19 MR. NEWMAN: I have nothing further, Your Honor.

20 THE COURT: All right.

21 MR. CORNEY: State, would call George McElveen.

22 THE COURT: Come around, Mr. McElveen.

23 THEREUPON,

24 GEORGE R. McELVEEN III,

25 after having been duly sworn, testified as follows:

1 THE COURT: Please tell us your full name and
2 spell your last name for the record.

3 MR. MCELVEEN: I'm George R. McElveen III,
4 M-C-E-L-V-E-E-N.

5 THE COURT: Yes, sir.

6 MR. CORNEY: Judge.

7 DIRECT EXAMINATION

8 BY MR. CORNEY:

9 Q Mr. McElveen, do you recall your representation of
10 Willie Green in this matter?

11 A I do.

12 Q Okay. How'd you become involved in this case?

13 A Well, he contacted me and made an appointment to come
14 to my office to discuss representation.

15 Q Okay. So he retained you in the matter?

16 A He did.

17 Q Do you recall having the opportunity to meet with Mr.
18 Green to discuss the charges he was facing?

19 A I did.

20 Q Any recollection of the number of times you met him?

21 A Willie and I met several times in my office. The first
22 time that he was -- that he came was a fairly extended
23 conference. He came back with his children on another
24 occasion. And after that, he had five appearances here
25 at the courthouse where nothing happened, and we would

1 spend time talking about his case at those times.

2 Q Okay. And during the course of those meetings, were
3 you able to review the indictments with him and kind of
4 go over the charges he was facing?

5 A When -- when Willie came to my office, he was very --
6 the -- the -- when he came to my office, he was at the
7 point where the Solicitor said you either plead or
8 you're going to trial. And when Willie retained me,
9 she was indulgent enough to put this off for a number
10 of months to allow me to get prepared.

11 Willie was very familiar with his case. It was a
12 fairly simple case. Nevertheless, I did serve a
13 discovery motion, obtained discovery, and discussed all
14 of this with Willie.

15 Q You said you did review the discovery with him? Go
16 over what the contents of that file with him?

17 A I did.

18 Q Okay. During your discussions -- well, I should start
19 by saying, is it fair to say Mr. Green isn't highly
20 educated?

21 A That's true.

22 Q Okay. During the course of your discussions, did you
23 ever have any concern about his ability to understand
24 your talks or -- or understand what you were going over
25 with him?

1 A Never did.

2 Q Never did. Okay. Ever believe he suffered from some
3 mental deficiency that would have affected his ability
4 to understand right from wrong?

5 A I did not.

6 Q How did you enter into plea negotiations? Did Mr.
7 Green ask you to enter into negotiations on his behalf?

8 A I don't specifically remember him asking me to enter
9 negotiations on his behalf. The issue was -- I mean,
10 it was an extremely strong case, and it was really only
11 one course of action.

12 I told Mr. Green on many occasions that he had the
13 right to go to trial. He was quite aware of that. I
14 didn't think that was much of an option, and he agreed
15 with me.

16 Q Okay.

17 MR. CORNEY: Beg the Court's indulgence for one
18 minute.

19 THE COURT: Yes, sir.

20 BY MR. CORNEY:

21 Q Did you have opportunity to ever get Mr. Green
22 evaluated or -- or enter into some evaluations to -- to
23 go over his competence or -- or ability to understand
24 any of this stuff?

25 A I -- I did not move for an evaluation. Now, he had --

1 I don't know if you want me to go into evaluation --

2 Q Well, and at the plea hearing there was some discussion
3 about his, I wouldn't say competency, but there was
4 some -- some discussion about some -- some -- his
5 mental abilities, I would say.

6 A Well, at the plea hearing, Judge Childs accepted his
7 plea but ordered a presentence investigation to include
8 a risk assessment.

9 Q Okay. Tell me a little bit about that, about how -- if
10 that was done, where it was done, who it was done by,
11 that sort of thing.

12 A Her order was that it be conducted by the Department of
13 Mental Health. So we submitted an Order. Ms. Fent and
14 I agreed on the content of the Order, submitted it to
15 the Department of Mental Health. They didn't act; they
16 didn't act. I got on it, started calling them on the
17 telephone to find out what the problem was. I got
18 shuffled around from person to person, and then finally
19 out of the blue, we got a letter back saying that they
20 only conducted a competency and -- and criminal
21 responsibility evaluations and would not do this type
22 of evaluation.

23 So Ms. Fent and I met with Judge Childs, and it
24 was proposed that Jacqueline Keye conduct the risk
25 assessment. That was agreed, and that's what happened.

1 Q Okay. Now, Judge Childs at the plea hearing, she
2 specifically noted she did not want competency hearing,
3 she didn't have issues with competency?

4 A That -- that never came up.

5 Q Okay. Mr. Green, on the record at his plea and I
6 believe his sentencing, readily admitted to his guilt
7 of the charges, correct?

8 A That's correct.

9 Q Okay. In your discussions, did he ever stray from that
10 keep in mind Code Section 17-27-130, attorney/client
11 privilege has been waived by the filing of this
12 application. Denying that he was guilty of these
13 charges to you?

14 A No, never.

15 Q Okay. I believe there was a Ms. Krell that spoke on
16 his behalf at the plea hearing. Is that something you
17 recall?

18 A Is that the lady that was from his church?

19 Q A church member, something like that.

20 A Yeah. I guess so.

21 Q And she kind of noted some -- some mental disabilities
22 or some sort of slowness, if you will?

23 A She -- she talked about some psychological issue.

24 Q Okay.

25 A She was not a, you know, any sort of an expert, but she

1 did discuss those things.

2 Q Okay. At any point in time after this plea, did Mr.
3 Green, Mr. Green's wife, anybody ask you to appeal the
4 plea?

5 A No. I filed a Motion for Reconsideration which would
6 have tolled the time of the appeal. And that issue
7 would have come back up at the time that that --
8 assuming that motion was denied, then that would have
9 been the time to address that.

10 Q Did you ever receive word from him or on his behalf to
11 file an appeal for him?

12 A Not -- not -- I don't -- I don't remember being asked
13 to file the appeal in the first place. But certainly
14 not after the -- after the sentence to reconsider.

15 Q Anything from the plea record that -- from the plea
16 hearing that you believe was preserved for appeal you
17 could have raised on appeal on his behalf?

18 A I haven't examined it in detail, but I think it was a
19 pretty clean plea.

20 MR. CORNEY: Okay. That's all the questions I
21 have, Your Honor.

22 THE COURT: Anything on redirect?

23 MR. NEWMAN: Yes, Your Honor, briefly.

24 CROSS-EXAMINATION

25 BY MR. NEWMAN:

1 Q Mr. McElveen, you -- you indicated earlier that a
2 Ms. McKeen made mention that there may have been some
3 mental problems with Mr. Green; isn't that correct?

4 A The lady?

5 Q Uh-huh.

6 A At the plea, she raised the issue of some psychological
7 issues. There was nothing in there that -- that red
8 flagged any competency or criminal responsibility
9 issues in -- in -- my opinion and you know that was
10 heard by every one in the courtroom that was heard by
11 Judge Childs the prosecutor and myself.

12 Q So that didn't raise any concern for you?

13 A No. Not at the time, no.

14 Q And going back to the actual plea that was conducted,
15 during these multiple times when Mr. Green indicated
16 that he did not understand what was going on or note in
17 the transcript when Judge Childs questioned him if he
18 understood what was going on, his response was no, that
19 he did not understand what was going on in the
20 proceeding, did that raise any red flags for you then?

21 A I never felt like Willie was in the dark about what was
22 going on. I know that he was -- that he said from
23 time-to-time, I don't understand. And, of course, I
24 don't specifically remember what those are off the
25 record conversations were. But I'm sure what I did was

1 explain those in items in more detail.

2 I just -- I just -- I never felt like Willie
3 didn't know what was going on. From the day he came
4 into my office, he knew what -- what he was facing.
5 And -- and I never changed that, although Willie did
6 start saying towards the end after the plea, between
7 the plea and sentencing, he would say more often than
8 before, I don't understand, when I would talk to him
9 about things.

10 Q But isn't it that the -- the vast majority of your
11 communication with -- in regards to Mr. Green's plea
12 went through his wife and actually not Mr. Green?

13 A No, that's absolutely not correct. She came and talked
14 to me on a regular basis. She came in my office
15 sometimes twice a week. I told her what I could when I
16 had information. When I didn't have any information, I
17 told her I didn't have any.

18 But Willie and I discussed these matters prior to
19 entering his plea. And I went down on two or three
20 occasions to the jail to talk to him prior to the
21 sentencing including a day or two before.

22 Q But there was -- there was significant communication
23 with his wife and --

24 A He clearly wanted me to talk to his wife and I didn't
25 have any hesitancy in doing so.

1 Q Was there opportunity where you actually -- or you
2 actually went through the discovery with Mr. Green
3 point-by-point?

4 A I don't know that I went through it point-by-point. I
5 explained to him and he -- well, he knew that this case
6 involved the DNA, the statements of his daughter. He
7 had the statements of his daughters when he came to my
8 office. He had the physical statements. That came the
9 same way -- they came to me in discovery.

10 And that was the -- that was the -- the -- the
11 core of the discovery right there. Now, I'm sure I
12 talked to him about more things than that, but -- but
13 he understood those items, I mean, as well as you and I
14 understand each other.

15 Q Was there any opportunity where -- where you-all were
16 reviewing, say for instance, sitting down reviewing
17 discovery together and he was actually reviewing
18 documents and reading documents in front of you?

19 A Willie -- Willie had made it clear to me that he
20 couldn't -- that he didn't know how to read, and I took
21 him at his word. I showed him plenty of documents, but
22 I also read him every thing that I thought he I thought
23 he needed to know.

24 MR. NEWMAN: I have nothing further, Your Honor.

25 THE COURT: All right. Anything on -- on

1 redirect?

2 MR. CORNEY: No redirect, Your Honor.

3 THE COURT: All right. You may step down, sir.

4 MR. CORNEY: No further witnesses on behalf the
5 State, Your Honor.

6 THE COURT: Anything further from any one?

7 MR. CORNEY: No, sir. Not from the State.

8 MR. NEWMAN: Just very briefly, Your Honor. And
9 again, just to -- to summarize the point as to why we're
10 here, your Honor.

11 There was obviously a significant level of
12 communication and the relationship that was formed between
13 my client and Mr. McElveen to the point that he relied on
14 his advice. I think it was obvious from the testimony, even
15 the testimony from my client, not only Mr. McElveen, that
16 there were some issues with learning. He did --

17 THE COURT: Why didn't you have him evaluated when
18 you started represented him on this PCR?

19 MR. NEWMAN: Well, we did -- we ran into a little
20 bit of a financial issue and being able to pay for that
21 exam, Your Honor.

22

23 THE COURT: That wasn't the answer I wanted but go
24 ahead.

25 MR. NEWMAN: Absolutely.

1 THE COURT: All right.

2 MR. NEWMAN: But nonetheless, that relationship
3 was formed and based off the testimony from my client, he
4 relied on the word and advice of his client ultimately to
5 his detriment. And he's purely seeking the opportunity to
6 have his case actually go to trial like he initially
7 requested as he indicated in his testimony that he requested
8 from his attorney.

9 And we believe that these issues and his inability
10 to comprehend the situation as exhibited not only from his
11 testimony, but as well as his transcript on multiple
12 occasions where he had to stop the proceeding for his guilty
13 plea that there was some confusion there. And I believe
14 ultimately that that lack of competency during the prior
15 proceeding leads to Mr. McElveen not providing effective
16 assistance of counsel and -- and protecting him purely and
17 comprehensively advising him of his rights.

18 So, you know, in conclusion, your Honor, we -- we
19 beg the mercy of this Court and respectfully request that
20 his application be granted and he be allowed the opportunity
21 to have his trial heard, Your Honor.

22 THE COURT: Thank you, Mr. Newman.

23 Yes, sir, Mr. Corney?

24 MR. CORNEY: Your Honor, the State will just rest
25 on the testimony of the record before the Court.

1 Thank you.

2 THE COURT: Thank you both for your lively
3 presentation. I will let you know my decision in due
4 course.

5 MR. NEWMAN: Thank you, Your Honor.

6 MR. CORNEY: Thank you, Judge.

7 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported the
4 preceding case entitled Willie Green V. State of South
5 Carolina No. 2010-CP-40-0871, at the Richland County
6 Courthouse, May 26, 2012.

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

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

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

15 _____
16 Crystal Holmes, Court Reporter
17 and Notary Public for the
18 State of South Carolina my
19 Commission Expires: April 21 2014

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Willie Green, #334538,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-00871

2871

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 NOV 19 PM 3:06

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 30, 2010. An evidentiary hearing into the matter was convened on Wednesday, May 23, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Brian Newman, 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, George McElveen, 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 December 2007 term of the Richland County Grand Jury for Incest, Criminal Sexual Conduct – Third Degree and two (2) counts of Criminal Sexual Conduct with a Minor – Second Degree (2007-GS-40-4012 through -4015). George McElveen, Esquire, represented Applicant on the charges. On July 31, 2008, Applicant

appeared before The Honorable J. Michelle Childs, where he pled guilty to the charges as indicted and sentencing was deferred. On April 30, 2009, Applicant came back before Judge Childs at which time he was sentenced to ten (10) years imprisonment each for Incest and CSC – Third Degree to run concurrently, and two consecutive twenty (20) year terms of imprisonment for the CSC – Second Degree charges for an aggregate fifty (50) year term of imprisonment.

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

LIST OF LIES TOLD BY Mr. GEORGE McELVEEN

- 1). Told green and his family that Judge Childs would give him a light sentence if he pled guilty.
- 2). Would not serve more than 5 years if he pled guilty.
- 3). That it would be an open plea from 1-5 years.
- 4). That he would file a Direct Appeal once the motion to reconsider was ruled on. Under the rules you only have 10 days. McElveen said the motion would not stop the Direct Appeal.
- 5). That he would need \$2,500.00 more dollars to get Mr. Green an Independent Private Evaluation, which Mr. Green never got.
- 6). That Judge Childs stated he might give him probation and time served. (Jail Time).
- 7). Told Mr. Green and his family a trial would be in his best interest because Judge Childs would give him a light sentence and jail time.
- 8). Told him to admit that he was a "Paraphilia", and would get the necessary treatment to overcome his disease, stating that would make Judge Childs give him a lighter sentence.

Here applicant argues that the State's Community supervision Program (hereinafter 'CSP') is a direct consequence of his criminal conviction. Also that his plea was entered involuntarily and unknowingly and in violation of due process because it was without understanding of the mandatory punishment of his plea and the CSP.

TRIAL COUNSEL LIED TO INDUCE APPLICATES GUILTY PLEA

Applicate ("hereinafter Green") contends that his guilty plea was based on lies to induce him to plead guilty.

1). First Green's attorney ("hereinafter McElveen") was ineffective and should a deficient performance when he induced Green's guilty plea based on lies. see U.S. v. Giardino, 797 F2d 30 (1st 1986).

A). McElveen told Green and his family that he would receive a light sentence maybe a couple years, with his jail time but no more than 3-5 years in an open plea

Green and his family will testify at P.C.R. to the lies that induced Green to plead guilty.

B). Testimony will be from the following family members: Jeana Boyd, Minor 1 Boyd, Erlean and Selina Boyd.

McELVEEN-LIED ABOUT INDEPENDENT EVALUATION

1). At the plea hearing in front of the honorable Judge Childs, on July 31, 2008, Judge Childs ordered an evaluation before she pronounced sentence.

When the trial court orders an evaluation, it is through the Department of Mental Health and it is charged to the state. McElveen told Green's wife that he needed \$2,500.00 more dollars for a private Independent Evaluation, which Green never received.

After receiving a copy of the court's ordered evaluation on March 14, 2009, McElveen was ineffective and showed a deficient performance when he failed to get a private evaluation to refute the states evaluation. After charging Green's family \$2,500.00 dollars to do so.

IV

UNKNOWNING AND INVOLUNTARY PLEA

The record shows that Green was not sentenced immediately after the acceptance of his plea. Instead, the court ordered a Forensic evaluation and sentenced was pronounced on 9-30-09.

At the time of the plea, it was Green's understanding, he would receive probation and time served, relying on Mr. McElveen's advise.

The record reflects that Judge Childs was going to give Green probation. He had already been interviewed for probation by Rocky Reinfro of Richland County Probation office. see Plea transcripts.

Green contends that his plea was involuntary, unknowingly, and unintelligently entered because he was lead to believe by McElveen, Judge Childs and Rocky Reinfro, that he was to receive probation and time served.

V.

INEFFECTIVE ASSISTANCE DUE TO FAILURE TO
INVESTIGATE BEFORE ADVISING TO PLEA

Applicante (hereinafter Green) contends his guilty plea was involuntary and unknowingly entered because his trial counsel (hereinafter McElveen) failed to investigate that the victims (hereinafter Boyd, Boyd and Boyd) knowingly used false testimony to lead police and the Solicitor's Office in to believing that Green knowingly used manipulation and force to perform sexual acts with him.

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, 385 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.

Involuntary Guilty Plea – Mental Incompetence

Applicant alleges his guilty plea was involuntarily and unintelligently entered into as a result of his mental incompetence at the time, which Applicant alleges counsel failed to properly investigate and present to the plea court.

Applicant testified at the PCR hearing that he only finished his education through seventh (7th) grade and cannot read or write. He stated he did understand what he was doing at the PCR hearing and said he had worked as cook prior to his arrest. Applicant testified he went to counsel's office roughly seven (7) months prior to his July of 2008 guilty plea and retained counsel to represent him on the charges. Applicant said counsel never reviewed the case file or discovery materials with him, despite Applicant repeatedly asking counsel to do so. Applicant stated his bond was revoked shortly thereafter, at which time he spent about a year in the county detention center while his wife continued communicating with counsel. Applicant alleged counsel only came to see him at the detention center twice during that time and once in the holding cell at the courthouse just prior to the plea hearing.

Applicant said he had advised counsel he could not read or write, and said he only pled guilty because counsel told him they were going before the "right judge", so Applicant would receive probation only. Applicant stated he didn't understand the questions being asked to him by the judge during the plea hearing. He went on to say that had he known "counsel was lying to him" about the sentence he would receive, he would not have pled guilty.

Counsel testified he was retained by Applicant later on in the matter, at which time the solicitor was already indicating that it was time for Applicant to either plead guilty or have the case called to trial. Counsel said he met with Applicant at his law office several times, including a "very long" first meeting, in addition to speaking with him each of the five (5) times Applicant

was called for an appearance at the courthouse. Counsel noted that because the state had "a very strong case against [Applicant]", he did not believe going to trial was a good idea, which Applicant agreed with after reviewing and discussing the discovery materials with counsel. Counsel said he was in fact aware that Applicant could not read, so he would read everything aloud to Applicant where necessary, but noted Applicant "well knew" the strength of the state's evidence against him. Counsel said Applicant requested counsel discuss the case with his wife while he was incarcerated, which counsel said he did very often in addition to thorough independent discussions with Applicant at the jail. However, counsel was adamant that the majority of the conversations were directly with Applicant and not relayed through Applicant's wife.

Regarding the issue of competency, counsel said he never had any concerns with Applicant's competency or ability to understand and participate in their conversations about his case. Counsel went on to note that during the mitigation presentation, Barbara Krell, a member of the pastoral staff at Confession Spring church, stated there was something "lacking mentally" with Applicant and a level "of not being able to comprehend right from wrong". Doctor Krell (who conceded she was not a psychologist or psychiatrist) went on to say she did believe Applicant should be evaluated on his ability to "understand right from wrong", after which the plea judge ordered sentencing be deferred to allow time for Applicant to be evaluated for the ability to understand right from wrong. The plea court specifically noted it was "not asking for a competency evaluation" of Applicant. (Plea Tr. p. 50, ll. 19 - 23). Counsel testified the evaluation was done for recidivism risks and not for mental competency, as competency was not in issue.

Based on a thorough review of the record and the testimony presented, this Court finds counsel was not ineffective in this regard. As a preliminary matter, this Court finds counsel's testimony to be credible, while conversely finding Applicant's testimony to be wholly incredible. Counsel plainly testified at the PCR as well as at the plea hearing that he had no concerns about Applicant's ability to comprehend and appreciate the nature of the charges against him, his conversations with counsel about the case, the repercussions of waiving a jury trial to enter a plea, and the potential consequences he was facing if he pled guilty. This Court, having had the opportunity to observe Applicant on the witness stand at the PCR hearing, finds counsel's assessment of Applicant's mental competency to be entirely within the range of reasonable professional assistance. See Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). Further, this Court finds Applicant freely and voluntarily entered the guilty plea after being fully and adequately advised of all relevant matters pertaining thereto by competent counsel acting well within the wide range of reasonableness demanded of criminal defense attorneys. Therefore, this Court finds no deficiency in this regard.

Additionally, Applicant has failed to prove resulting prejudice as he failed to present any evidence that he was in fact incompetent to stand trial or otherwise enter a guilty plea at the time he did. See State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976) (*the test of competency to enter a plea is the same as required to stand trial*). In fact, based on the record and counsel's credible testimony, this Court finds Applicant did have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding, and had a rational and factual understanding of the proceedings against him. See Carners v. State, 275 S.C. 353, 271 S.E.2d 121 (1980). Therefore, this Court finds Applicant has failed to satisfy his burden of proof in proving deficiency and resulting prejudice.

Failure to File Direct Appeal

The only other allegation Applicant presented at the PCR hearing was that counsel was ineffective for failing to file and perfect a direct appeal of the plea on Applicant's behalf. Applicant testified he asked counsel to file an appeal, but counsel never did so. Counsel conversely testified he did file a motion for reconsideration on Applicant's behalf, but never filed a direct appeal as Applicant never asked that he do so.

This Court finds the allegation to be entirely without merit based on counsel's credible testimony. 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 testimony provided by counsel in this regard, Applicant did not request counsel file an appeal on his behalf, 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.

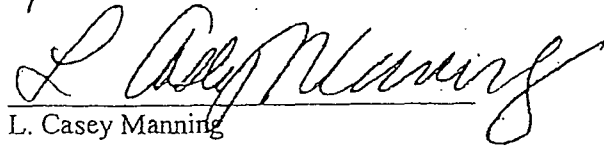
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an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

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the 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) ROB MARTIN, RCSD

DOCKET NO. 2007-GS-40-4015

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

ARREST WARRANT NUMBER

1-936475

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury

DEC 12 2007

VERDICT

Person of Petit Jury

ie:

THE STATE
vs.

WILLIE GREEN

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR 2nd

SC Code: 16-3-655(3)
CDR Code: 397
Class FELC(V)

After being fully advised as to my legal rights, I hereby waive the right to a trial by jury and to the Grand Jury.

Defendant

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

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on DECEMBER 12, 2007, the Grand Jurors
 of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2nd DEGREE

That WILLIE GREEN did in Richland County on or between JANUARY 1, 2004
 AND NOVEMBER 15, 2004, wilfully, unlawfully and feloniously engage in a sexual
 battery against Minor 2 who was at least fourteen (14) years of age but who
 was less than sixteen (16) years of age, and said defendant being older than said victim
 and/or the defendant was in a position of familial, custodial, or official authority to coerce
 said victim to submit, all in violation of S.C. Code of Laws § 16-3-655.

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


 Warren B. Giese, SOLICITOR

WITNESSES

(S) R. Martin-RCSD

ARREST WARRANT NUMBER

1-936476

ACTION OF GRAND JURY

TRIPLE BILL

Person of Grand Jury *Sharon H. Blair* DEC 12 2007

VERDICT

Person of Petit Jury
e:

DOCKET NO. 2007-GS-40-4014

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

92

DECEMBER TERM 2007

THE STATE
vs.

WILLIE GREEN

Indictment for
CRIMINAL SEXUAL CONDUCT
WITH A MINOR 2ND

SC Code: 16-3-655(3)
CDR Code:397
Class FEL/C(V)

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

Defendant

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

CERTIFIED TRUE COPY OF ORIGINAL FILED
C.C.C.P.&G.S.
CHLAND COUNTY
OUTH CAROLINA

Willie Mr. Green
Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 2nd DEGREE

That Willie Green did in Richland County on or between October 25, 2000 to October 25, 2003, willfully, unlawfully and feloniously engage in a sexual battery against Minor 1 who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, and said defendant being older than said victim and/or the defendant was in a position of familial, custodial, or official authority to coerce said victim to submit; all in violation of S.C. Code of Laws § 16-3-655.

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


Warren B. Giese, SOLICITOR

WITNESSES

(S) R. Martin-RCSD

ARREST WARRANT NUMBER

1-936477

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: DEC 12 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-4013

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

92

THE STATE

VS.

WILLIE GREEN

Indictment for

CRIMINAL SEXUAL CONDUCT

3RD DEGREE

SC Code: 16-3-654

CDR Code: 0162

Class FEL/E

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

Defendant

Willie Green

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

CERTIFIED TRUE COPY OF ORIGINAL FILED
C.C.C. PAGE
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT 3rd DEGREE

That Willie Green did in Richland County on or between January 1, 2006 to January 18, 2007, engage in sexual battery upon and with the body of Minor 3 without her consent; such sexual battery was accomplished by the use of force and/or coercion, all in violation of SC Code of Laws § 16-3-654.

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


Warren B. Giese, SOLICITOR

WITNESSES

(S) R. Martin-RCSD

ARREST WARRANT NUMBER

1-936478

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury DEC 1 2 2007
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-4012

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

92

THE STATE

vs.

WILLIE GREEN

Indictment for

INCEST

SC Code: 16-15-20
CDR Code: 0090
Class: FELONY

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

Defendant

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

Defendant

Witness:

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

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
C.C.C.P.A.G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

INCEST

That Willie Green did in Richland County on or between October 25, 2000 to October 25, 2003, did willfully and unlawfully engage in carnal intercourse with his daughter, ^{Minor 1} all in violation of Section 16-15-20, Code of Laws of South Carolina.

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


WARREN B. GIESE, SOLICITOR