

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Williamsburg County

Honorable R. Kirk Griffin, Circuit Court Judge

JOHN D. COOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001648

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG) 2020-GS-45-00149

State of South Carolina,)

Plaintiff,)

vs.)

John Dan Cook,)

Defendant.)

Transcript of Record

OCTOBER 18, 2021

B E F O R E:

Honorable Kristi F. Curtis
Williamsburg County Courthouse
Kingstree, South Carolina

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

Warren S. Anderson, Esquire
Attorney for State

William J. V. Barr, Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

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(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

1 **THE COURT:** Mr. Anderson.

2 **MR. ANDERSON:** May it please the Court?

3 **THE COURT:** Yes, sir.

4 **MR. ANDERSON:** Your Honor, we're here on the matter of
5 State versus John Dan Cook associated with indictment number
6 2020-GS-45-149. He is represented by Virgil Barr of the
7 Williamsburg County bar.

8 Your Honor, it is my understanding that Mr. Cook has a
9 motion related to Mr. Barr representing him. Just for
10 information, Mr. Cook was on the trial docket this week. He
11 indicated to the state that he intended to plead guilty as
12 part of a plea deal. He is now backing out of that plea, so
13 we'd like to have a discussion with you on the record about
14 the fact that there will be no plea offers after this point
15 and the potential penalty in the case as well. We'd like to
16 deal with the motion pertaining to Mr. Barr's representation
17 first.

18 **THE COURT:** Sure. Mr. Barr.

19 **MR. BARR:** Yes, Your Honor. I'm representing Mr. Cook.
20 Mr. Cook and I -- I guess to give the Court some background,
21 this case was originally handled by Mr. Doward Harvin. Upon
22 my transitioning into the public defender's office, I then
23 took over this file from Mr. Harvin. And Mr. Cook and I have
24 met sometime, I want to say April, May. We've had several
25 discussions about this case as it was always told to me that

1 it was going to be one that was going to be tried, you know,
2 in the very, very near future.

3 Mr. Cook and I had a meeting on last week. At that
4 point, Mr. Cook had indicated he has signed the sentencing
5 sheet or the plea sheet. This morning I was alerted that I
6 needed to meet with Mr. Cook, and in that conversation he
7 expressed that he at this point was not willing to enter into
8 the plea agreement and that he wanted to hire his own attorney
9 or hire another attorney.

10 Mr. Cook and I have had several conversations this
11 morning in regards to the case. He has been adamant that he
12 does not want to enter into a plea deal, that he wishes to go
13 forward to trial. He wishes to have another attorney.

14 **THE COURT:** Okay. Mr. Cook, you certainly have every
15 right to a trial, and we'll go over that in just a few
16 minutes. You don't have to take any plea offer that the state
17 gives you. Everybody in this country has the right to a jury
18 trial for everything from a seatbelt ticket all the way up to
19 the most serious crime, you've got the right to go in front of
20 a jury of your peers and have them determine whether you're
21 guilty or not guilty.

22 First, let's address your attorney situation. How long
23 have you been at the jail, sir?

24 **MR. COOK:** The 4th of December will be two and a half
25 years.

1 **THE COURT:** Okay. And tell me what your attorney issues
2 are?

3 **MR. COOK:** I just don't feel -- every time I call to
4 speak to my attorney, I get to speak to the secretary which
5 tells me I will relay a message and they will return, you
6 know, come back and talk with you, no one comes and talks. I
7 haven't been advised of any negotiations or -- I was brought
8 one plea and went before Judge Newman on that plea, and I was
9 advised by my attorney, Mr. Harvin, to deny that plea.

10 There's been several other plea offers that I can understand
11 that has been presented that hasn't even been brought to me.

12 And I've been in front of -- I've been up for one bond
13 hearing. I've been asking for -- that was in September of
14 2019. I've been asking ever since then for another bond
15 hearing and been promised several times for a bond hearing and
16 have not received another bond hearing.

17 I've asked for two years from Mr. Harvin and Mr. Barr if
18 I may have someone come in and talk to me, and expert come in
19 and talk to me, because I've had things happen to me as a
20 child. And I was just wanted someone to come in and discuss
21 some things with me and maybe get some clarification for me
22 and help me. And so far I've had nothing.

23 And, ma'am, I'm asking for the Court to appoint me
24 another attorney that may be not affiliated with Williamsburg
25 County if that's possible.

1 **THE COURT:** Well we have two ways of appointing you an
2 attorney. We've got the attorneys who are with the public
3 defender's office.

4 **MR. COOK:** Yes, ma'am.

5 **THE COURT:** If there is a conflict then we can appoint an
6 attorney who is not an official public defender that's what we
7 call Rule 403, I think, who is an attorney who works on a
8 contract basis as a public defender. Sometimes those are
9 within the county and something they're without the county.

10 You -- when you cannot afford an attorney, you have the
11 right to have one appointed for you.

12 **MR. COOK:** Yes, ma'am.

13 **THE COURT:** You don't get a chance to just pick and
14 choose who you want. Sometimes the attorney/client
15 relationship breaks down to the point that it's not capable of
16 being repaired and at that point we sometimes do switch
17 attorneys. But you know we only have so many attorneys that
18 we can appoint. So it's got to be a pretty good reason for me
19 to say that you don't have Mr. Barr representing you, that
20 you've got somebody else representing you.

21 Tell me about the history of the plea offers, Mr. Barr.
22 Can you tell me is this a new plea that Mr. Anderson has
23 offered? I know Mr. Cook says that he was in front of Judge
24 Newman with the previous plea offer.

25 **MR. BARR:** Your Honor, yes, Your Honor. I'll do -- I

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1 guess I'll give as much context or history as I have.

2 **THE COURT:** Sure.

3 **MR. BARR:** From my understanding, the plea agreement that
4 Mr. Cook signed where he was supposed to be here today, to my
5 understanding that had always been the plea offer from the
6 state. Now, I do believe that there was another solicitor
7 that was working this case, Solicitor Pierce, and there was a
8 offer -- there was some sentencing sheets from Solicitor
9 Pierce in regards to this case. The offers from what I've
10 read on the sentencing sheets mirror that example of what the
11 state has offered. But I've been in conference with the state
12 this morning, they've informed me that that actually, that
13 plea agreement or offer that Solicitor Pierce was offering was
14 actually different from what Solicitor Anderson is offering at
15 this point in time.

16 Now, as far as the conversations, my first conversation
17 with Mr. Cook at our very first meeting which took place at
18 the detention center, I told him exactly where the state was,
19 what the offer was, and the offer from the state is the exact
20 same offer as it is this morning. And all of our
21 conversations were about that in that meeting. You know, my
22 conversation with Mr. Cook was since I had just gotten
23 assigned it wasn't really the proper time for me to even
24 advise him on a plea offer or make him aware that there was a
25 plea offer and that I had just gotten assigned and I wanted to

1 meet him.

2 I cannot speak for what conversations were had with Mr.
3 Cook and Mr. Harvin. I can tell you that I've had
4 conversations with Mr. Harvin. Everything that I have told
5 Mr. Cook and everything that I have gotten from Mr. Harvin, it
6 appears that everybody has been on the same sheet of music I
7 guess, you know analogy speaking, in regards to what the state
8 was offering.

9 **THE COURT:** And you've gone over the discovery with Mr.
10 Cook?

11 **MR. BARR:** We have watched the interviews; we have gone
12 through the statements. At our last conversation we actually
13 watched the entirety of the interviews with Mr. Cook and law
14 enforcement. And as I said before, Your Honor, Mr. Cook and I
15 have had several meetings. I was under the impression that we
16 were actually going to get called -- his case was going to get
17 called in, I want to say September, I think it was August. So
18 I actually started preparing as if we were going to go to
19 court in August, but it was actually another case that I
20 actually ended up trying in August. So we had had
21 conversations about the case, about the discovery because I
22 thought we were going to trial in August on this one, and we
23 got here and I found out that it was another case we were
24 going to try.

25 **THE COURT:** Okay. Mr. Anderson, anything you want to

1 add, sir?

2 **MR. ANDERSON:** Yes, Your Honor. I'd like to clear up a
3 few things. Mr. Cook said that you know he's been begging for
4 a bond. I had all the people in this courtroom, I don't have
5 the date in front of me, he backed out on the bond hearing in
6 this courtroom. They made a motion for a bond and there's
7 more than one victim, and it took a lot to get them here, and
8 he backed out. I want to clear that up.

9 And the second, the issue of the plea offers. I don't
10 want any fuzz to be on record. Ms. Pierce did briefly have
11 this case when she was here in Williamsburg County. My
12 understanding of her offer was a much stricter offer than what
13 I'm offering Mr. Cook. She basically said he could plea
14 guilty to every single charge that he has and let the Judge
15 decide the sentence. That was her plea offer on the case.
16 When I got the case back, I conveyed the 25-year offer. But
17 there was also a brief period of time that I was the only
18 solicitor in Williamsburg before Ms. Pierce that I had the
19 case. And that's my understanding of the timeline.

20 And, Your Honor, we oppose vehemently switching lawyers.
21 This case is very ready for trial. The only reason we're not
22 trying it this week is I thought -- he had a signed sentencing
23 sheet and I thought he was going to plead guilty this morning.
24 We've got a doctor who is coming from the upstate who I told
25 they don't have to come and I can re-subpoena them. There's

1 not a lot to this. We have court again in three weeks from
2 today is my understanding. We plan on picking this case for
3 trial. The victims are here and they're ready for justice and
4 there's no reason to delay it. This case needs -- the Supreme
5 Court guidelines for cases to be tried, it has age to it. He
6 has been in jail for more than 90 days and it's a serious
7 case. We haven't heard anything where they have some material
8 dispute about representation, which is what usually gets
9 someone a new lawyer. Mr. Cook simply doesn't like what he's
10 hearing and is trying to get a new lawyer to delay this
11 process again. The state is ready to go forward.

12 **THE COURT:** Can you give me the charges against Mr. Cook?

13 **MR. ANDERSON:** Yes, Your Honor. He has seven counts of
14 criminal sexual conduct with a minor in the first degree; one
15 count of criminal sexual conduct with a minor in the second
16 degree; one count of criminal sexual conduct with a minor in
17 the third degree; one count of sexual exploitation of a minor,
18 and I believe that's second degree but it's not on the face of
19 the indictment; and one count of disseminating harmful
20 material to a minor.

21 **THE COURT:** Can we go through -- thank you -- okay.

22 I just wanted to see what the various statutes were, but
23 I'm showing for the CSC with a minor involves -- first degree
24 involves a victim less than 11 and it carries 25 years to
25 life. It is a most serious offense, no suspended sentence, no

1 probation, no parole. It counts as two strikes, active
2 electronic monitoring is required, no foster care or adoption.
3 It does require the sex offender registry, and it is
4 classified as a sexually violent offense.

5 The CSC with a minor in the second degree, victim between
6 the ages of 11 and 14. I'm showing is zero to 20 years.

7 The third degree, somehow I don't have that here. Let's
8 see. Okay. Third degree where a victim is under 16 and over
9 14. Is that not more than 15?

10 **MR. ANDERSON:** Yes, Your Honor. I believe my
11 recollection, I don't have the book in front of me, that is a
12 zero to 15 offense.

13 **THE COURT:** Sexual exploitation of a minor - second
14 degree is two to ten years.

15 Disseminating -- I'm trying to get the correct statute
16 here, under 16-15-385(b) is up to ten years.

17 And the offer of the state is to allow Mr. Cook to plead
18 to one count of criminal sexual conduct with a minor, victim
19 less than 11 - first degree, which carries 25 to life.

20 **MR. ANDERSON:** Right. And the state's recommendation
21 would be a minimum 25-year sentence.

22 **THE COURT:** Okay. And Mr. Cook, you understand that
23 that's the state's offer?

24 **MR. COOK:** Yes, ma'am.

25 **THE COURT:** And you understand that you're facing

1 significantly, I mean six more charges just of criminal sexual
2 conduct with a minor in the first degree, each of which would
3 carry 25 years to life. You understand that?

4 **MR. COOK:** Yes, ma'am. I understand.

5 **THE COURT:** And I understand that the -- and let's talk
6 about this because the state, that offer is good for today; is
7 that my understanding?

8 **MR. ANDERSON:** It's good for the next ten minutes.

9 **THE COURT:** Okay. And I understand that this has been
10 the discussion for some period of time.

11 **MR. ANDERSON:** Yes, Your Honor.

12 **THE COURT:** So as we discussed earlier, Mr. Cook, of
13 course the foundation of our judicial system is the jury
14 trial. You have every right to have a jury trial and let 12
15 citizens here the evidence against you and let them decide
16 whether you're guilty or not guilty. You're facing seven,
17 eight, nine, ten, it looks like 11 charges and so each of
18 those charges carry some significant jail time, so I want to
19 make sure that you understand that this trial is number one on
20 the trial list for November. We have Judge Newman it looks
21 like the weeks of November 18th, excuse me November 8th and
22 December 6th here in Williamsburg County. And we'll be
23 convening juries on those dates. And you understand that?

24 **MR. COOK:** Yes, ma'am. But I do want to say something
25 about the bond hearing that he mentioned ---

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1 **THE COURT:** Sure.

2 **MR. COOK:** --- that I backed out. My attorney, Mr.
3 Harvin, resigned in March I think it was, and Mr., I think his
4 name is Mr. Donnald, the head of the ---

5 **THE COURT:** He is the chief public defender, that's
6 correct.

7 **MR. COOK:** He came in and seen me two days before, or
8 that Friday before the bond hearing and he told me that he was
9 going to go ahead and schedule it for Tuesday, but he didn't
10 feel comfortable with just meeting me that one day to go in
11 front of the bond hearing. He wanted to wait and let's put it
12 off until June.

13 **THE COURT:** Uh-huh. (Affirmative response.)

14 **MR. COOK:** Well when June came around that's when Mr.
15 Barr got my case and I never went back in front of anybody in
16 June.

17 **THE COURT:** Okay.

18 **MR. COOK:** But that's, that's the reason, ma'am, that it
19 didn't go back in front of anybody for the bond hearing.

20 **THE COURT:** Well, Mr. Cook, at this point I'm not
21 inclined to switch attorneys. We're right here on the cusp of
22 trial. You've not told me anything that gives me grounds to
23 think that there's some kind of conflict between you and your
24 attorney or some irreconcilable difference with respect to
25 your representation.

1 I've had a trial with Mr. Barr. He's a very competent
2 and able trial attorney. In fact, the last time I had in
3 Williamsburg County was a criminal sexual conduct trial with
4 Mr. Barr and it was a not guilty verdict is my recollection.
5 So you have very capable counsel.

6 So first of all, your motion to relieve Mr. Barr and have
7 another attorney appointed, I'm going to deny that motion.

8 So I want to make sure, sir, before you turn down this
9 offer that you understand -- no issues of competency in this
10 case? Nothing along those lines?

11 Mr. Barr, you've been able to communicate with Mr. Cook?

12 **MR. BARR:** Yes, Your Honor. I've had several
13 conversations with Mr. Cook. Our relationship doesn't span as
14 long as his relationship with Mr. Harvin, but I believe that
15 we've have several, you know, meaningful conversations. I
16 find him to be competent. I find he understands the severity
17 of the charges. As the solicitor illuded to, we had a signed
18 agreement, and I was only alerted probably 45 seconds before I
19 came into Your Honor's chambers that we did not have an
20 agreement anymore.

21 **THE COURT:** Yeah. And, Mr. Cook, I'm certainly not
22 holding that against you. I just want to make sure you
23 understand because there's no going back when I -- when you
24 leave this courtroom today, there's no going back and oh,
25 yeah, I do want to take the deal. And you understand that?

1 **MR. COOK:** Yes, ma'am. I mean I just feel like I was
2 scared into signing it the other day. I'm 55 years old,
3 ma'am, and I understand that 25 years, I'm probably not going
4 to live another 25 years. I mean nobody knows that to be sure
5 of, but I just know ---

6 **THE COURT:** And you don't have to tell me the reasoning.
7 If you tell me that you've have time to consider it and think
8 about it. I just want to make sure you understand all of the
9 implications, that you're facing considerably more time going
10 forward with the trial. And you understand that?

11 **MR. COOK:** Would it be possible for me to wait to
12 tomorrow were I could talk to some of my family members and
13 get some ---

14 **MR. ANDERSON:** Yes.

15 **THE COURT:** I'm going to be here tomorrow morning at
16 9:30, so we'll give you overnight to think about it, Mr. Cook.
17 Then we'll need an answer tomorrow because then at that point
18 everybody has to shift into trial preparation mode.

19 **MR. COOK:** Yes, ma'am.

20 **THE COURT:** Including the solicitor, including your
21 attorney, so we can't tarry much longer with this. That
22 November trial is going to be coming up very quickly.

23 **MR. COOK:** I understand, ma'am.

24 **THE COURT:** So we'll give you today so you can think
25 about it and we'll need an answer from you tomorrow morning.

1 **MR. COOK:** Okay.

2 **MR. BARR:** And, Your Honor, if I could just put on the
3 record in regards to Mr. Cook and his belief that, I think he
4 said that he was pressured or he felt pressured. In our last
5 meeting, Your Honor, I met with Mr. Cook outside of the
6 jailhouse, here in the courtroom area and this very desk so
7 that he would not feel under any pressure, he would not be
8 under any restraints.

9 **THE COURT:** Well listen, this is pressure of the highest
10 order. It's not something that Mr. Barr has put on you.

11 **MR. COOK:** I understand that.

12 **THE COURT:** This is a high -- I mean this is one of the
13 most difficult decisions you're ever going to make, Mr. Cook,
14 and that's not my doing and that's not Mr. Barr's doing. It's
15 a scary decision. Nothing I can say is going to make it less
16 scary. Nothing Mr. Barr can say to you is going to make it
17 less scary. If anyone is scaring you, it's because we want
18 you to understand this is a serious decision that you've got
19 to make. We don't want you to make it lightly. I don't think
20 anyone is trying to scare you just to be mean. But if we
21 didn't scare you, then down the road you would probably be
22 saying well Mr. Barr didn't convey to me the seriousness of
23 the decision that I was making. So he can't win. If he makes
24 it scary to you, it's too scary. If he doesn't make it scary
25 enough, then he's not doing his job and not fulfilling his

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1 responsibility to you.

2 **MR. COOK:** Yes, ma'am. I understand that.

3 **THE COURT:** So this is as tough a decision as you'll ever
4 make. We'll give you certainly overnight to think about it.
5 Talk with whoever you would like to, absolutely, and we just
6 need to have a decision in the morning.

7 **MR. COOK:** The only thing is, ma'am, we have to go in at
8 12 o'clock and I won't be able to make a phone call after 12
9 o'clock.

10 **MR. ANDERSON:** I'll call the jail specifically and make
11 sure that Mr. Cook has access to a phone or not. He might be
12 able to do it right now.

13 **MR. BARR:** Your Honor, I've allowed Mr. Cook to make
14 phone calls. I have no problem with Mr. Cook calling. At our
15 last meeting Mr. Cook called three or four people.

16 **MR. COOK:** I called one person, sir.

17 **MR. BARR:** You talked to one person.

18 **MR. COOK:** Called.

19 **THE COURT:** Okay. Thank you.

20 **MR. ANDERSON:** Thank you, Your Honor.

21 **THE COURT:** Again, we'll just need an answer by 9:30
22 tomorrow morning.

23 (END OF HEARING)

State vs Cook

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C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of State of South Carolina versus John Dan Cook in the Court of General Sessions for Williamsburg County, Williamsburg County Courthouse, Kingstree, South Carolina, on October 18, 2021.

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



Sallie Beth Todd, CVR
Official Reporter

October 17, 2022.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF WILLIAMSBURG) 2020-GS-45-00149

State of South Carolina,)

Plaintiff,)

vs.)

John Dan Cook,)

Defendant.)

Transcript of Record

OCTOBER 19, 2021

B E F O R E:

Honorable Kristi F. Curtis
Williamsburg County Courthouse
Kingstree, South Carolina

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

Warren S. Anderson, Esquire
Attorney for State

William J. V. Barr, Esquire
Attorney for Defendant

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)

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(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

1 **THE COURT:** Okay. What do we need to address before we
2 bring the jury in?

3 **MR. ANDERSON:** Your Honor, yesterday we had a brief
4 conference with John Dan Cook. It's my understanding that he
5 has decided to accept the guilty plea and we have him here.
6 The victim is here.

7 **THE COURT:** All right. Let's go ahead and address that.

8 **JOHN DAN COOK, HAVING BEEN**
9 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **MR. ANDERSON:** May it please the Court?

11 **THE COURT:** Yes, sir.

12 **MR. ANDERSON:** Your Honor, before you is John Dan Cook
13 pleading guilty on indictment number 2020-GS-45-149 for one
14 count of criminal sexual conduct with a minor, victim under 11
15 years of age, first degree. The state's recommendation in
16 this case is a twenty-five-year active sentence. He is
17 represented by William Virgil Barr of the Williamsburg County
18 Public Defender's Office.

19 **THE COURT:** Okay. Has Mr. Cook been sworn yet?

20 **THE CLERK:** Yes.

21 **THE COURT:** Okay. Mr. Cook, I'm Judge Curtis, we spoke
22 yesterday.

23 **MR. COOK:** Yes, ma'am.

24 **THE COURT:** I'm going to go through your rights with you
25 before we go too much further. Mr. Cook, first of all, what I

1 understand today is that you're going to plead guilty to one
2 count of criminal sexual conduct with a minor first degree.
3 This carries a minimum of twenty-five years up to life
4 imprisonment. Is that your understanding, sir?

5 **MR. COOK:** Yes, ma'am.

6 **THE COURT:** And you've talked with your attorney Mr. Barr
7 about your decision today?

8 **MR. COOK:** Yes, ma'am.

9 **THE COURT:** And has Mr. Barr answered all of your
10 questions for you?

11 **MR. COOK:** Yes, ma'am.

12 **THE COURT:** And are you satisfied with what he's done for
13 you?

14 **MR. COOK:** Yes, ma'am.

15 **THE COURT:** Do you need any further time to confer with
16 him before we go forward with this decision today?

17 **MR. COOK:** No, ma'am.

18 **THE COURT:** You're not under the influence of any drugs
19 or alcohol today?

20 **MR. COOK:** No, ma'am.

21 **THE COURT:** Has anyone promised you anything to try to
22 get you to plead guilty, other than what you've just heard Mr.
23 Anderson put on the record?

24 **MR. COOK:** No, ma'am.

25 **THE COURT:** Has anybody forced you, threatened you,

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1 coerced you in any way?

2 MR. COOK: No, ma'am.

3 THE COURT: Have you been treated for any mental health
4 issues, either currently or in the past?

5 MR. COOK: No, ma'am. I have asked to see someone, but I
6 haven't seen anyone. No, ma'am. But I haven't ever been
7 treated or anything. No, ma'am.

8 THE COURT: You're not on any kind of prescription
9 medications today?

10 MR. COOK: No, ma'am.

11 THE COURT: Nothing to keep you from making a good
12 decision today?

13 MR. COOK: No, ma'am.

14 THE COURT: You've got a number of constitutional rights
15 that you waive whenever you enter a guilty plea so I'm going
16 to go over those rights.

17 First of all, you have a constitutional right to remain
18 silent. What that means for you is that if you decided that
19 you wanted a trial, nobody could force you to testify during
20 that trial. If you chose not to testify, nobody can hold that
21 against you, not the Judge and not the jury. During a trial
22 the Judge would specifically charge the jury that they cannot
23 even discuss that fact during their deliberations. They
24 shouldn't be even discussing in the jury room the fact that
25 the defendant chose not to testify. It's the state that has

1 the burden of proving you guilty. You don't have any
2 corresponding duty to prove yourself innocent and the Trial
3 Judge would instruct the jury of that. Of course, when you
4 plead guilty you're waiving that right to remain silent. And
5 you understand that?

6 **MR. COOK:** Yes, ma'am.

7 **THE COURT:** The constitution, both state and federal,
8 also guarantees you the right to a trial by jury. To let 12
9 citizens come into this courtroom, let them hear the state's
10 evidence, and let them decide whether you're guilty or not
11 guilty. Of course, when you plead guilty it means you're
12 waiving that constitutional right to a trial by jury. And you
13 understand that?

14 **MR. COOK:** Yes, ma'am.

15 **THE COURT:** If you decided that you wanted a trial the
16 state would have the burden of proving you guilty beyond a
17 reasonable doubt, and that beyond a reasonable doubt standard
18 is the highest standard that we have in the law. All 12
19 jurors would have to agree that you're guilty and be firmly
20 convinced of your guilt before you could be convicted. Again,
21 you waive those rights today when you enter this plea. And
22 you understand that?

23 **MR. COOK:** Yes, ma'am.

24 **THE COURT:** When you have a trial you also get the chance
25 to confront the witnesses for the state. The witnesses sit

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1 right here in the witness stand, they testify in the courtroom
2 where Mr. Barr would have the chance to ask them questions on
3 cross examination. Mr. Barr can also present a defense on
4 your behalf and he would have subpoena power, so he could
5 subpoena your witnesses to come to court and compel those
6 witnesses to come and testify in your case. Again, you waive
7 those rights today when you enter this plea. And you
8 understand that?

9 MR. COOK: Yes, ma'am.

10 THE COURT: When you -- well first of all, have you had a
11 chance to over the discovery in this case?

12 MR. COOK: Ma'am, say that again.

13 THE COURT: Are you aware of what evidence the state
14 would use against you if you went forward with your trial?

15 MR. COOK: Yes, ma'am.

16 THE COURT: And you've reviewed that evidence with your
17 attorney?

18 MR. COOK: Yes, ma'am.

19 THE COURT: And you understand if you made any statements
20 to law enforcement, it's possible that your attorney could
21 challenge the admissibility of any statements that you made.
22 And you'd be entitled to a pretrial hearing of whether or not
23 those statements were admissible. And do you know that?

24 MR. COOK: Yes, ma'am.

25 THE COURT: It's possible if any physical evidence was

1 being admitted against you that your attorney could move to
2 exclude that and have a legal determination of whether those
3 things could be used against you. And you understand that?

4 **MR. COOK:** Yes, ma'am.

5 **THE COURT:** This is classified as a most serious offense,
6 and so for your purposes what you need to understand is this
7 counts as two strikes. So if you were to get another either
8 serious or most serious offense after this, then the state
9 could seek life imprisonment. Do you understand that?

10 **MR. COOK:** Yes, ma'am.

11 **THE COURT:** In addition, this is classified as a violent
12 offense, which is going to affect your classification at the
13 South Carolina Department of Corrections. It will affect the
14 amount of time you will serve. This is also a no parole
15 offense, that the sentence cannot be suspended. Again, this
16 is an 85 percent, so you would have to serve 85 percent of the
17 sentence. And you understand that?

18 **MR. COOK:** Yes, ma'am.

19 **THE COURT:** This also is an offense that will require
20 registry as a sexual offender. It's a lifetime requirement.
21 It also requires GPS monitoring. And there is -- at this
22 point there is no expiration on that. Do you understand that?

23 **MR. COOK:** Yes, ma'am.

24 **THE COURT:** Basically it would require lifetime GPS
25 monitoring after your release. Do you understand that?

1 **MR. COOK:** Yes, ma'am.

2 **THE COURT:** This is also categorized as a sexually
3 violent offense. And what that means for you is at the time
4 of your release the state may institute proceedings to have
5 you declared a sexual violent predator, in which case they can
6 petition the court to have you housed in a mental facility
7 before you are released at the end of your sentence.

8 And have you discussed that sexually violent predator
9 proceeding with your client, Mr. Barr?

10 **MR. BARR:** I have not discussed that part of it, Your
11 Honor. No, ma'am.

12 **THE COURT:** Why don't we stand down and you talk with him
13 about that because I think that is -- every time someone is
14 pleading to a sexually violent offense they need to know about
15 that, the sexually violent predator proceeding so that they
16 just know. My guess is that that's likely to occur in the
17 future.

18 **MR. BARR:** Yes, ma'am.

19 **THE COURT:** All right. We're going to step down for a
20 few minutes just to let y'all discuss that.

21 **(COURT IS IN RECESS)**

22 **THE COURT:** Okay. Thank you. We're back on the record
23 in Cook.

24 Mr. Barr, have y'all had a chance to go over the sexually
25 violent -- sexually violent predator proceedings?

1 **MR. BARR:** Yes, ma'am. We went through the proceedings.
2 We went through the act. I explained to Mr. Cook exactly the
3 timeline of events of when these things take place based on
4 when his release date is. I read to him the definitions,
5 explained to him what it means to be classified as a sexually
6 violent predator. He indicated to me that he understood that
7 and I do believe that I've explained it to him thoroughly. I
8 believe Your Honor has explained it to him thoroughly as well.

9 **THE COURT:** So, Mr. Cook, it's a proceeding that takes
10 place at the end of your sentence. The state has to petition
11 the court to request that you be declared a sexually violent
12 predator, and a Judge has to find that there is probable
13 cause. And that triggers further proceedings where the
14 Department of Mental Health will evaluate the defendant and
15 depending on what the evaluator, it's usually a forensic
16 psychiatrist, depending on what that person says, the other
17 side, the adverse party, can seek their own independent
18 evaluation. There's a right to a jury trial in that
19 proceeding. You actually can have a jury trial as whether or
20 not you should be declared a sexually violent predator. If
21 you were to be declared a sexually violent predator, then that
22 would trigger mental health treatment, so you would not be
23 incarcerated, you would go to some type of a mental health
24 facility. And then that triggers regular reviews to determine
25 the progress of the mental health treatment. Do you have any

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1 other questions about that proceeding before we move forward?

2 **MR. COOK:** No, ma'am.

3 **THE COURT:** Mr. Cook, knowing all of your right, sir, are
4 you pleading guilty or not guilty to this charge?

5 **MR. COOK:** Guilty.

6 **THE COURT:** Okay. I'm going to hear the facts from Mr.
7 Anderson and then I'll have some more questions for you.

8 **MR. ANDERSON:** Your Honor, this case started back in
9 February of 2018. The victim in this case, **Minor 1**

10 , was placed in Mr. Cook and Ms. White's care by the
11 Department of Social Services, along with some of her
12 siblings. At the end of that placement, when she was back
13 with her mother, she disclosed that she had been sexually
14 abused by Mr. Cook the entire time that she lived there. A
15 forensic interview -- the mother forwarded that to the
16 sheriff's office.

17 In May 2019 a forensic interview was done. **Minor 1**
18 disclosed a lot to the interviewer. First off, that she was
19 under 11 years of age when he started happening multiple times
20 in multiple locations. She described specifically three
21 events that happened: in the truck, in her bedroom, and on a
22 four-wheeler in the woods. She described sexually battery as
23 described in the statute that John Cook placed his mouth on
24 her private parts and sexually penetrated her with his digits.
25 She also disclosed that that happened -- that he had her

1 manipulate his private parts on the four-wheeler and in the
2 truck as well. She said the defendant showed her pornography
3 and the defendant took nude photographs of her with a cell
4 phone, but then later deleted the pictures off of his cell
5 phone. John was arrested based on the information in that
6 forensic interview and on 6/4/2019 he gave a mirandized
7 interview to Investigator Brown and Archie Kennedy of the
8 Williamsburg County Sheriff's Department.

9 In that interview Mr. Cook was initially reticent to own
10 up to what happened, but after a female officer left the
11 interview room he did admit Archie Kennedy that he placed his
12 mount on the juvenile's body parts when they were bare, that
13 he did have her masturbate him on the four-wheeler. He denied
14 it happened it, excuse me, he did not deny that it happened.

15 Law enforcement took further steps and they actually
16 pulled Mr. Cook's jail calls. And in those jail calls -- and
17 the specifics of how Mr. Cook admitted to it could only have
18 been known to someone that was there because the four-wheeler
19 stuff, he didn't know that she'd said all of that. So it has
20 particular (inaudible) of the liability because it would have
21 to be circumstances of how she described it happens.

22 Like I said, law enforcement pulled his jail calls and
23 listened to hours of them and the solicitor's office did too.
24 And when Mr. Cook was talking to his wife he admits that some
25 kind of sexually activity happened with Minor 1. He says

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1 (inaudible) and he couldn't control what was happening. When
2 he was speaking to his wife he tried to blame the juvenile.
3 He also in these jail calls admitted to taking these
4 photographs of her and then deleting them. And that's the
5 evidence the state would present in this trial.

6 And I did -- Mr. Cook has other charges with this victim
7 and other charges with other victims that are being dismissed
8 as part of this plea.

9 **THE COURT:** So everything else pending against Mr. Cook
10 is being dismissed as a result of this plea?

11 **MR. ANDERSON:** That's correct.

12 **THE COURT:** And which particular ---

13 **MR. ANDERSON:** It is count one on the indictment.

14 **THE COURT:** Okay. Mr. Cook, are those facts true, sir?

15 **MR. COOK:** Yes, ma'am.

16 **THE COURT:** Okay. I do find that there is a sufficient
17 factual basis for me to accept the plea. I find that you're
18 entering the plea today freely and voluntarily, certainly
19 understanding your rights, and with the advice of counsel of
20 Mr. Barr, a very competent attorney. You've got ten days from
21 today's date if you wanted to appeal. That appeal has got to
22 be in writing and that ten-day deadline is a hard and fast
23 deadline in the law. If you wait past the ten days you've
24 lost the right.

25 Mr. Barr, sir, I'd be glad to hear anything you want to

1 tell me.

2 **MR. BARR:** Your Honor, Mr. Cook and I have discussed
3 this, we've discussed the facts of the case. He did express
4 to me numerous times that he felt truly sorry about everything
5 that had happened. That he had, you know, that he cares for
6 his family, and he cares for his family deeply. And he just
7 expressed desire again this morning that he wanted to close
8 this chapter and he wanted to accept responsibility. So we
9 just ask that the Court accept the recommendation from the
10 state. As Mr. Cook has, you know in our conversations, not
11 withstanding yesterday, he's always expressed regret about
12 this situation and everything that's resulted from it.

13 **MR. ANDERSON:** I apologize, Your Honor. I was having a
14 brief conversation with the victim. Minor 1 is
15 here in court, and Minor 1 she doesn't have anything to
16 say. She wants to the Court to know that she was here, she is
17 ready to try the case. She wants what's happening today. I
18 know that Minor 1's mother does have a brief remark that
19 she'd like to tell the Court.

20 **THE COURT:** Sure. I'm glad to hear from her.

21 Ma'am, if you'll tell me your name for the record,
22 please.

23 **MS. WALDROP:** My name is Sara Rebecca Waldrop.

24 **THE COURT:** And spell -- can you spell your last name for
25 us, please?

20 I will say that it's not left up to me because if you
21 would have asked me this two and a half years ago I would tell
22 you that I hated him and that I wish he was dead. Today I
23 stand before you and I say that because of a God of my
24 understanding I have to be forgiving for his actions. This
25 forgiveness is not for him, this is for me, and this is for my

1 child.

2 And I do love him even though what he's done is
3 unrepairable. I ask that God have mercy on his soul. And I
4 don't wish this upon anybody. But at least we know now that
5 the cycle is broken, that this will not happen again to
6 another child, at least not another one of my children. I
7 hope that he can find peace with where he's going. I don't
8 wish it upon anybody, but neither does what she has to endure
9 the rest of her life as well.

10 So with that being said, I hope that your decision -- and
11 I appreciate him taking the plea bargain because it saves her
12 from having to relive and rehash all of the things that he's
13 done. I'm so sorry that it destroyed so many people's lives
14 including his own. And I appreciate you letting me speak.
15 Thank you.

16 **THE COURT:** Thank you, Ms. Waldrop.

17 This is never a happy day. I'm certainly going to go
18 along with the recommendation of a term of 25 years.

19 Is there a -- do y'all have a count of the days that he
20 has served?

21 **MR. ANDERSON:** I don't, Your Honor. I apologize.

22 **MR. BARR:** I'm looking for that right now, Your Honor.

23 **THE COURT:** If y'all can just tell me how many -- I know
24 they like for us to give them a specific number of days on
25 here.

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1 I do thank the family for being here. I know it takes a
2 lot out of you every time you've got to come to this
3 courtroom. Minor1, I appreciate you being brave enough to
4 be in here and for having the courage to come forward and
5 tell. A lot of times people don't, and there's a lot of
6 reasons for that and I don't blame anybody, but you've done a
7 really brave thing that is very difficult. There are a lot of
8 adults who don't come forward and tell about things that have
9 happened to them. So I hope this gives everybody an
10 opportunity to at least move on and get some closure.

11 MR. BARR: Two years, four months and 15 days, Your
12 Honor, is what our rough calculation is.

13 Is that correct, Madam Clerk?

14 THE CLERK: Two years, four months, 16 days.

15 MR. BARR: Two years, four months, 16 days, Your Honor.

16 MR. ANDERSON: Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 Good luck to you, Mr. Cook.

19 MR. COOK: Ma'am, may I say something to them?

20 THE COURT: You may.

21 MR. COOK: Can I turn and face them?

22 THE COURT: I'd prefer if you don't, but you're welcome
23 to ---

24 MR. COOK: I just want to tell them that I'm so sorry and
25 that I love them. And I want Minor1, I know her as Minor1, I

1 want her to remember the Uncle John that taught her how to
2 ride her bicycle, and the Uncle John that spent hours in the
3 yard teaching her how to play softball. And the Uncle John
4 that was determined -- when we got her in softball I heard the
5 other kids asking her why does your uncle have to bring you to
6 ball practice? Why does your uncle come to the game? Why
7 don't you live with your mom? And she would have to explain
8 that, and none of the other girls would let her use anything
9 that they had. I went out and I spent over \$200 in softball
10 equipment so that child did not have to ask anybody for
11 anything, and that's what I want Minor I to remember me as.

12 I love them with all of my heart, each and every one of
13 those children. I regret this situation happened, but I don't
14 regret bringing those children into my home because at the
15 time they needed a home. And I love them and I want -- I know
16 she said it was Sara, I know her as Becky, I want her to
17 remember the brother-in-law that would go by her house with
18 her first two children and make sure that her children had
19 diapers and milk. And I remember one particular morning I
20 went by and she said, yes, I need diapers and milk but my
21 children are sick. I need medicine worse than that. I said
22 get those children ready and come and show me what kind of
23 medicine you need and that's the brother-in-law I want her to
24 remember.

25 And again, I am so sorry.

1 **THE COURT:** My Cook, there is one thing I've learned in
2 this job is that most people are not all good and they are not
3 all bad. I've seen otherwise good people make terrible,
4 terrible decisions. I've seen some people who've done
5 terrible things who are also capable of doing really good
6 things. I've seen inmates at the Department of Corrections
7 step in and put their own lives at risk to help a guard. So
8 it's rarely black and white that everybody is good and
9 everybody is bad in my experience. The bad things that you do
10 doesn't make the good things go away.

11 **MR. COOK:** Yes, ma'am.

12 **THE COURT:** But we all have consequences for the things
13 that we do in life. And so if you are facing up to those
14 consequences, you know, you've got the advantage that you're
15 facing up to this and a lot of people can't -- they can't
16 recover or get help until they admit that they do have a
17 problem. So you've got the advantage that this family is
18 willing to forgive you and that's no small thing. So I thank
19 you for your comments.

20 Thank y'all.

21 **UNIDENTIFIED FEMALE:** Your Honor, Minor1 does want to
22 say one thing.

23 **THE COURT:** Sure.

24 You don't have to stand up. No, ma'am. You can sit
25 right there.

2.0

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Minor 1: I just want to tell him -- I just want to tell him that I forgive him. I want to tell him I forgive him, and I love him.

THE COURT: Thank you.

MR. COOK: I love you too, darling.

(END OF HEARING)

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2020-GS-45-00149

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of State of South Carolina versus John Dan Cook in the Court of General Sessions for Williamsburg County, Williamsburg County Courthouse, Kingstree, South Carolina, on October 19, 2021.

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



Sallie Beth Todd, CVR
Official Reporter

October 11, 2022.

FORM 5

STATE OF SOUTH CAROLINA **FILED**

COUNTY OF

2022 AUG 15 PM 1:30

IN THE COURT OF COMMON PLEAS

2022-CP45-328

Full name and prison number (if any) of Applicant

JOHN DAW COOK #38624705 (S.C.)

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Turbeville Corr. Inst.
2. Name and location of Court which imposed sentence Williamsburg County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Criminal Sexual Conduct with a minor (1st)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCT 19, 2021 28 years other terms not known
 - (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 "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Because I WAS unable to obtain a new lawyer.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Insufficient Council

- (b) I Requested new Counsel be Appointed for me, but was denied by the Judge.
- (c) _____

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

- (a) I WAS held in County Jail for nearly 2 1/2 years, going up for Sent Time, Even though I Requested to my Lawyer - over
- (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 "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

(b) the name and location of the Court in which each was filed:

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

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

i. William J Barr. Williamsburg County Public Defender's office

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

Any Relief, including A Reduction in Sentence, Any Relief Regarding the stipulations of my Release and Counseling for me.

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

NO

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, _____, 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.

x *John Cook*

SWORN to and subscribed before me this

day of 4 August, 2022

Bridget Toller - Duvent (L.S.)
Notary Public

My Commission Expires: March 15, 2031

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John C. [Signature]
Applicant

SWORN or affirmed to and subscribed before me this

14 day of August, 2022

B. Budget Towson, Queen
Notary Public

My Commission Expires: March 15, 2031

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

John Dan Cook, SCDC #386297

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2022-CP-45-00328

RETURN
(COUNSEL APPOINTED)

2022 NOV 10 AM 11:56
SCLC

In response to the post-conviction relief (PCR) action commenced by John Dan Cook (Applicant) on August 15, 2022 the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Beginning in February of 2018, the minor victim was placed in the care of Applicant by the Department of Social Services. At the end of that placement, when she was back with her mother, she disclosed that she had been sexually abused by Applicant the entire time she lived there. The minor victim was under 11 years of age during the abuse. In May of 2019 a forensic interview was done with minor victim. The victim disclosed that Applicant placed his mouth on her private parts and sexually penetrated her with his digits. Furthermore, Applicant showed her pornography and took nude photographs of victim with a cell phone. (GP Tr. pp. 11-13).

Applicant was arrested and subsequently indicted by the Williamsburg County Grand Jury for ten (10) counts of first degree criminal sexual conduct with a minor, one (1) count of second degree criminal sexual conduct with a minor, two (2) counts of third degree criminal sexual conduct with a minor, two (2) counts of disseminating harmful material to minor, and two (2)

counts of sexual exploitation of a minor (2020-GS-45-00149; 2021-GS-45-00122). Applicant was represented by William J. V. Barr of the Williamsburg County Public Defender's Office. The case was prosecuted by Assistant Solicitor Warren S. Anderson of the Third Circuit Solicitor's Office.

On October 19, 2021, Applicant pleaded guilty to criminal sexual conduct, first degree (2020-GS-45-00149) before the Honorable Kristi F. Curtis. Judge Curtis sentenced Applicant to 25 years' imprisonment pursuant to the State's recommendation.¹ Applicant did not file a direct appeal.

II. CURRENT APPLICATION

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

10(a) Ineffective Assistance of Counsel

11(a): "In June of 2019 I was given Mr. William Joseph Virgil Barr as my lawyer and asked him for a bond hearing but instead was asked to sign a plea deal... "Upon standing in front of judge on Oct. 18, 2021 I asked the Judge for new counsel, telling the judge that I didn't feel my lawyer had done everything for me. I was told no that I could not fire my lawyer because I didn't like them. I was given 14 hours by the judge to accept the plea deal or go to trial in 2 weeks with the lawyer I just tried to fire. Having felt before that nothing was had been done on my behalf, I really felt my back was against the wall and so was persuaded to sign the plea deal. I was taken back in front of the judge on Oct. 19, 2021 for sentencing. My lawyer never spoke to me again after that or offered any advice as to what legal alternatives I may have had including appeal."

¹ Applicant pleaded guilty to one count of first degree criminal sexual conduct in exchange for the other counts of the indictments being dismissed.

Applicant requests relief as follows:

“Any relief, including a reduction in sentence, any relief regarding the stipulations of my release and [ineligible] for me.”

Attached to this return and incorporated by reference are the Williamsburg County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the guilty plea transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler,

286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew

of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Id.* The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington*, 562 U.S. at 105.

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was

not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decision making” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining

whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Strickland, 466 U.S. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In Applicant’s case, the record fully supports that Applicant entered a knowing, voluntary, and intelligent plea with the advice of competent counsel, who was able to secure an extremely favorable plea agreement that allowed Applicant to plead to one count of criminal sexual conduct with a minor, first degree, in exchange for the other counts of the indictments being dismissed. Applicant explicitly told the plea court he understood criminal sexual conduct with a minor, first degree, carries a minimum of 25 years up to life imprisonment. (GP Tr. pp. 3-4). Applicant also told the court that he was satisfied with counsel’s representation, that they had enough time to discuss the case, and that Mr. Barr had answered all of Applicant’s questions regarding the guilty plea. (GP Tr. p. 4). Furthermore, Applicant pleaded guilty pursuant to the State’s recommendation of 25 years imprisonment, so he was fully aware of the consequences of a guilty plea.

Accordingly, Respondent submits the record conclusively refutes Applicant's allegations. However, allegations regarding counsel's performance may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

V. GENERAL DENIAL

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

VI. CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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By: 

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November 7, 2022

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

JOHN DAN COOK, #386297

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

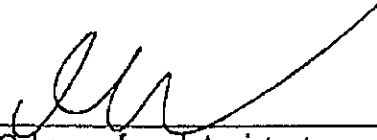
2022-CP-45-328

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Timothy Lee Griffith, Esquire
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this 7th day of November, 2022.



Joshua Osborne, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA }
COUNTY OF WILLIAMSBURG }

COURT OF COMMON PLEAS

JOHN D. COOK }
386297 }

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
22-CP-45-00328

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

June 13, 2023
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. KIRK GRIFFIN, JUDGE

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

TIMOTHY L. GRIFFITH, ESQ.
Attorney for the Petitioner

ZACHARY W. JONES, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. JONES: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. JONES: This is the matter of John Dan Cook
4 v. The State of South Carolina, case
5 number 2022-CP-45-328. My name is Zachary Jones for
6 the State of South Carolina. Mr. Cook is present
7 and is represented by Mr. Tim Griffith. Mr. Cook
8 was indicted by the Williamsburg County grand jury
9 for ten counts of first-degree criminal sexual
10 conduct with a minor, one count of second-degree
11 criminal sexual conduct with a minor, two counts of
12 third-degree criminal sexual conduct with a minor,
13 two counts of disseminating harmful material to a
14 minor, and two counts of sexual exploitation of a
15 minor and those indictment numbers are
16 2020-GS-45-149 and 2021-GS-45-122.

17 Mr. Cook was represented by William J.V. Barr
18 of the Williamsburg County Public Defender's Office,
19 and the case was prosecuted by assistant solicitor
20 Warren Anderson of the Third Circuit Solicitor's
21 Office. On October 19th, 2021, Mr. Cook pled guilty
22 to criminal sexual conduct in the first-degree, case
23 number 2020-GS-45-149, before the Honorable Kristi
24 F. Curtis. Judge Curtis sentenced Mr. Cook to
25 25-years imprisonment pursuant to the State's

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1 recommendation. Mr. Cook did not file a direct
2 appeal. This post-conviction relief action was
3 timely commenced by Mr. Cook on August 15th, 2022.
4 And with that, I'll turn it over to Mr. Griffith to
5 begin his case.

6 THE COURT: All right, Mr. Griffith.

7 MR. GRIFFITH: May it please the Court. Your
8 Honor, I'd like to call Mr. John Cook to the stand.

9 THE COURT: All right, Mr. Cook, please come
10 forward to the witness stand.

11 THE CLERK: Mr. Cook, place your left hand on
12 the Bible. Raise your right hand a little bit.
13 Okay, state your full name.

14 THE WITNESS: John Dan Cook.

15 WHEREUPON,

16 **JOHN DAN COOK,**

17 having been duly sworn by the clerk, testified
18 as follows:

19 THE CLERK: Thank you much, sir. Step around
20 please. I'd like for you to state your full name
21 and spell your last name please.

22 THE WITNESS: John Cook, C-O-O-K.

23 **D I R E C T E X A M I N A T I O N**

24 BY MR. GRIFFITH:

25 Q Mr. Cook, good morning. Well, good

PW - J. COOK - DIRECT

1 afternoon.

2 A Yes, sir.

3 Q Mr. Cook, where are you currently
4 incarcerated?

5 A At Turbeville Correctional Institution.

6 Q Just down the road here?

7 A Yes, sir.

8 Q Now, Mr. Cook, how long have you been in
9 there already?

10 A October 21st of this year will be two
11 years?

12 Q Okay. And so as the assistant attorney
13 general spoke, you were sentenced to 25-years; isn't
14 that correct?

15 A Yes, sir.

16 Q And you do understand that you were
17 sentenced based on one count of the criminal sexual
18 conduct?

19 A Yes, sir.

20 Q And that you have -- you had pending at
21 the time ten counts of criminal sexual conduct with
22 a minor?

23 A Yes, sir.

24 Q Correct? And for each of those you could
25 get 25-years, you do understand that, right?

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1 A Yes, sir.

2 Q That's 250-years?

3 A Yes, sir.

4 Q Okay. Just want to be sure you
5 understand, if we win the PCR, that that will be the
6 position you're back in?

7 A Yes, sir.

8 Q Okay. Now, first of all, you and I talked
9 about your grounds for appeal. And one of the
10 things you told me was that at first you were
11 represented by Mr. Doward Harvin; is that correct?

12 A Yes, sir.

13 Q And then later you were represented by
14 Mr. Barr; is that correct?

15 A Correct.

16 Q So how many times did you get to speak to
17 Mr. Doward Harvin?

18 A Mr. Harvin, I spoke with him one time and
19 that was during my initial appearance where I was
20 trying to get a bond as well, but it was my initial
21 appearance. That's the only time I got to speak to
22 him.

23 Q Okay. Now that was your appearance when,
24 like at the jail, or do you mean like at the first
25 appearance?

PW - J. COOK - DIRECT

1 A Yes, sir. After you're arrested it was
2 like ---

3 Q The next day?

4 A No, no, it was like two-months.

5 Q Oh, okay.

6 A Two-months before my initial appearance,
7 yes, sir.

8 Q Okay. So that's your first appearance
9 then. And how long did you have to talk to him?

10 A Maybe three, four-minutes before I was
11 taken in to the court.

12 Q So you didn't have a long extended
13 conversation?

14 A No, sir. No, sir.

15 Q He didn't have an opportunity to go over
16 your case with you?

17 A No, sir.

18 Q Did he go over your discovery? That is,
19 the evidence against you?

20 A No, sir.

21 Q Okay. So then how long was it after that
22 before you realized that he was not your attorney
23 anymore and Mr. Barr was your attorney?

24 A The next time I saw Mr. Harvin was through
25 video monitoring. I was brought over to a room with

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1 several other inmates in the county and they do, I
2 guess what you call it, a virtual hearing or
3 whatever. And at that time Mr. Harvin told the
4 judge that we were trying to get a -- a bond hearing
5 set up. And the judge said, well, let's get it
6 done, let's try it next month. Well, the next --
7 that next month didn't happen. And the following
8 month, I want to think it was the following month,
9 maybe April, is when Mr. Harvin resigned from the
10 Public Defender's Office and went into private
11 practice and Mr. Barr took my case in June.

12 Q Okay. So when you found out that Mr. Barr
13 was your attorney, did you have a -- how many times
14 did you see Mr. Barr after that?

15 A He came initially and talked with me and
16 one other inmate that -- well, he has also taken
17 over his case and introduced himself as our new
18 lawyer, and then I don't recall seeing Mr. Barr
19 anymore until about two-weeks before this trial
20 where he put the plea in front of me and a ink pen.

21 Q Okay, so ---

22 A And he did talk with me about 30-minutes
23 that day.

24 Q Okay. So did he have an opportunity to
25 bring you all the evidence that was against you and

PW - J. COOK - DIRECT

1 show it to you?

2 A No, sir. He -- more or less we went over
3 the -- well, I was interrogated to start with by the
4 police. He -- we went over that; that was it.

5 Q Went over the what? I missed that.

6 A It's a -- I guess it's like a computer
7 thing where they record the interrogation or
8 whatever.

9 Q Uh-huh.

10 A It was that.

11 Q Okay. And how long did he spend doing
12 that, do you know?

13 A Probably 30-minutes.

14 Q Okay. Did you see him again before you
15 went to court?

16 A No, sir. He came in that morning that
17 they took me over there and put me in the little
18 holding cell. He came in and asked me if I was
19 ready and I told him, I said, no, sir, I think I
20 need to get me a different attorney, I think I need
21 another attorney. And he went out and came back in
22 and said we were going on in, that he'd went and
23 talked with judge, the judge, and we were going
24 on in to see the judge, and I could -- I could
25 explain it to the judge and tell the judge that I

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1 need -- wanted another attorney, and that I did.

2 Q And what was the result of that?

3 A Judge Curtis asked me why I wanted another
4 attorney and I told her I felt like I wasn't being
5 treated fairly, I wasn't being represented fairly;
6 and she told me that I could not fire my lawyer
7 because I didn't like him and that I either accept
8 this plea or in two-weeks we were coming back to
9 court and Mr. Barr would be my attorney during the
10 court proceedings.

11 Q Okay. Now, so basically you really didn't
12 have a lot of time with your attorney?

13 A No, sir.

14 Q Either attorney?

15 A It was less than 24-hours.

16 Q And you didn't have an opportunity to go
17 over all of your discovery, is that what you're
18 telling us?

19 A No, sir. When, when that was said they
20 give me the time till 9:30 the next morning to make
21 my mind up whether I wanted to accept the plea or
22 not, and I was taken out of the courtroom.

23 Q Okay. All right. So, so the
24 ineffectiveness basically is that your attorneys did
25 not -- you did not have enough time to speak with

PW - J. COOK - DIRECT

1 your attorneys to go over the discovery, that is,
2 the evidence against you, and to discuss with them
3 what those implications were and what might happen?

4 A Yes, sir. Sir, I tried -- I tried
5 multiple times to get a bond hearing set up and
6 could never get one of those set up.

7 Q Okay. Now let's talk about another aspect
8 here. You pled guilty; is that correct?

9 A Yes, sir. I felt like I had to at that
10 point.

11 Q Okay. Did you ask your attorney to file
12 an appeal?

13 A No, sir, I did not.

14 Q Okay.

15 A Sir, I'm ignorant to the law. I'll be the
16 first to tell you that. I don't know much about the
17 law, and I didn't -- I didn't know I needed to
18 inform my attorney to file for an appeal.

19 Q Okay. Now you told me at one point that
20 someone had made an offer to you to plead for a
21 ten-year sentence. You tell me that? You remember?

22 A I do, yes, sir.

23 Q Okay. Did you ever see the paper that
24 said that?

25 A The two-weeks before the trial when Mr.

PW - J. COOK - DIRECT

1 Barr called me over to talk to me about the plea,
2 when he opened his briefcase up this plea was in
3 there; and his words to me was, why didn't you take
4 this, and I said, sir, I didn't never -- I never saw
5 it, I never saw it to take it or reject it. And his
6 words were, well, it's expired now so it doesn't
7 matter.

8 Q So Mr. Harvin never brought you any kind
9 of an offer; is that correct?

10 A I did receive one offer from Mr. Harvin;
11 it came via mail. He didn't bring it himself.

12 Q What, what was that offer for?

13 A It was a offer for 25-years.

14 Q For 25?

15 A And he advised me to decline it.

16 Q Okay, all right. And did Mr. Barr ever
17 come up with an offer for you?

18 A No, sir, other than this, the one -- the
19 one that we're here for.

20 Q Okay. Now had you been aware that you had
21 that offer for ten-years, would you have accepted
22 that offer?

23 A Absolutely, yes, sir.

24 Q Had you been aware that the of-- the
25 sentence of 25-years that you feel like you just

PW - J. COOK - DIRECT

1 didn't have time to think about that, would you have
2 gone to trial had you had a little more time?

3 A Probably, yes, sir, I can't say that for
4 sure. But at that particular time I felt like I was
5 backed up in a corner because I had just asked for
6 another attorney saying that I didn't feel like my
7 attorney was doing anything for me or I was being
8 treated fairly and now they're telling me in
9 two-weeks that's my attorney and I'm going to trial
10 if I don't take this plea, so I felt like at that
11 time I really had no other choice.

12 Q Okay. Now another thing you and I talked
13 about, when you were offered the plea, did you talk
14 to someone about it being an 85-percent is what you
15 mentioned?

16 A Again, sir, I am ignorant to the law. I'm
17 just -- I remember what Judge Curtis asked during
18 the sentencing, this is 85-percent.

19 Q Okay.

20 A And I remember the prosecutor saying, yes,
21 ma'am.

22 Q And how'd that turn out?

23 A Well, according to my sentencing sheet at
24 Turbeville it's a mandatory.

25 Q In other words, it's a day for day?

PW - J. COOK - DIRECT

1 A I'm guessing that, yes, sir. Again, I'm
2 ignorant to the law so, yes, sir, I'm guessing
3 mandatory means day for day.

4 Q Okay. Do you have anything else you can
5 add, you can help us to understand why you feel like
6 you need a new trial? That your attorney, that had
7 they done something different you either would have
8 gone to trial or done a better ---

9 A I just feel like if I would have maybe
10 gotten a bond hearing, maybe had an ankle monitor
11 put on me where I could have went back to work,
12 maybe I could have hired an attorney to represent me
13 instead of a public defender. And I feel like and
14 if I would have gotten an attorney to defend me that
15 would have truly defended me, then I maybe got a
16 better deal than what I got or went to trial at his
17 advice, whatever the case may have been.

18 I don't know if it has any bearing on it at all
19 or not; but since I've been incarcerated, I've been
20 accepted into the character dorm where I'm at. I've
21 been elected a mentor in this character dorm. I've
22 received Jesus Christ as my lord and savior. I've
23 been baptized there at this dorm at this facility.
24 And I -- sir, even the two -- nearly two-and-a-half
25 years that I was in the County I was discipline

PW - J. COOK - DIRECT

1 free. I haven't had any infractions, disciplinarys
2 against me, none whatsoever.

3 Q Okay. Do you have anything else that you
4 can help the Court in their decision?

5 A No, sir. There's -- I mean, I just -- I'm
6 willing to do whatever it is I need to do. If it's
7 counseling, rehab, whatever it may be, whatever the
8 case may be, I'm willing to do whatever I need to
9 do, sir.

10 Q Okay. Please answer any questions that
11 the Attorney General's Office may have.

12 A Yes, sir.

13 MR. JONES: No questions for this witness.

14 THE COURT: All right.

15 Thank you, sir. You may step down.

16 MR. GRIFFITH: I have no further witnesses.

17 THE COURT: You can step down.

18 All right, Mr. Jones.

19 MR. JONES: Thank you. May it please the
20 Court, the State would like to call attorney William
21 J.V. Barr.

22 THE COURT: All right, Mr. Barr, please come
23 forward.

24 THE CLERK: Still sworn, Your Honor? Okay.

25 DIRECT EXAMINATION

SW - W. BARR - DIRECT

1 BY MR. JONES:

2 Q Thank you, Mr. Barr. Do you recall having
3 became involved in this case?

4 A Yes. I, upon transitioning into the
5 Williamsburg County Public Defender Office in May of
6 2021, I inherited files from my predecessor
7 Mr. Doward Harvin; and one of those case files was
8 that of Mr. John Cook.

9 MR. JONES: And just so the record is clear,
10 Your Honor, is Mr. Barr still sworn in?

11 THE COURT: Yeah, he's -- he remains under
12 oath.

13 BY MR. JONES:

14 Q All right. Thank you. And do you recall
15 how many meeting-- how many times you met with Mr.
16 Cook?

17 A All the -- as far as can be documented, we
18 met in September, we met in October. And I believe
19 in October we might -- we met on two to either three
20 separate occasions. There was one thing -- there
21 was a special meeting that we had where we -- Mr.
22 Cook and I had been down the road as far as
23 discussing his case file. My first meeting with him
24 was in the detention center and there is where I
25 went over the discovery again. I discussed -- I

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1 asked him, you know, to get his side of the story,
2 wanted to followup as far as conversations he'd had
3 with his former attorney. I do believe I reached
4 out at some point to Mr. Harvin to talk about the
5 case because there was -- this case was a older one.
6 And once we were getting down to the wires as far as
7 coming up on potential trial roster, I was able to
8 work something out with the folks at our jail,
9 really good jail staff, and I was able to have
10 Mr. Cook brought over strictly by himself. Normally
11 when we would meet, it would be during general
12 appearances; and in those meetings it would be the
13 other inmates or, and also other folks that had been
14 out on bond that would come, so I wanted to have
15 some time alone with Mr. Cook to really go through
16 the case file. The meeting lasted well -- well
17 longer than 30-minutes. I believe it was maybe in
18 two to three-hours we went through all of his
19 interviews. We went through the discovery again,
20 and I had them bring him over by himself during the
21 week day and we actually met in the courtroom
22 because I wanted no distractions. I wanted, you
23 know, time for Mr. Cook and I to really talk about
24 this case. We talked a lot about the offer from the
25 State. We talked a lot about the evidence.

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1 Mr. Cook, you know, didn't feel comfortable as far
2 as making a decision so he asked if he could use my
3 phone so he could call his pastor and some other
4 church members. I believe he made two phone calls
5 to talk -- to discuss it with them. I believe I had
6 Mr. Anderson come down because there was a -- there
7 was a clarification point that we wanted to --
8 wanted to resolve with Mr. Cook and the State
9 because, like I said, we watched the interview. And
10 after that meeting, Mr. Cook had indicated he wanted
11 some time to think.

12 Then we met again, I believe, the next day and
13 that's when he said he was gonna plead. Then when
14 we got into -- when we had court the next week, I
15 believe, he indicated that he no longer wanted to
16 plead, he wanted to -- essentially he wanted another
17 attorney.

18 Q All right. And you mentioned the
19 interviews. If you'd just explain briefly the
20 nature of the State's evidence against Mr. Cook?

21 A Yes. Mr. Cook, he wanted to talk to law
22 enforcement and so he had given a interview with, I
23 believe it was Investigator Archie Kennedy. I want
24 to believe -- I think that's who it was. In the
25 interview it was pretty much tantamount to a

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1 confession where he had admitted parts of the
2 charges. The charges that were the most serious, he
3 had pretty -- he had admitted to what he had done.
4 So we played, we watched that whole interview, and I
5 watched it with Mr. Cook because I wanted to try to
6 understand where his case was from a defense
7 strategy standpoint to kind of let him know what I
8 -- what I believe we would face if we were to take
9 this to trial. I also let him read the notes, the
10 incident reports from the victims, from one of the
11 victim, which was very -- was very descriptive. And
12 then also, with the descriptive nature of the
13 victim's statement and then also with the admittance
14 of Mr. Cook that something of a sexual nature had
15 happened with one of the children on -- in the
16 on-camera interview with law enforcement, I really
17 advised him that if we -- that it was my belief if
18 we went to trial, that he would -- that we would
19 most highly be unsuccessful, that there -- that he
20 would be facing a multitude of charges. And I
21 believe the plea offer at that point was for him
22 just pleading to one charge.

23 When we went in front of Judge Curtis, -- and I
24 remember this distinctly -- Judge Curtis did tell
25 Mr. Cook that this -- I think her verbatim she said,

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1 this is serious, and you know, if Mr. Barr doesn't
2 make you understand how serious it is, then, you
3 know, say that he hasn't done right by you so this
4 is a very serious matter. And she gave Mr. Cook, I
5 believe, 24-hours to think about whether or not he
6 wanted to plead and, you know, gave him time to use
7 the phone and talk to his family members, and the
8 next morning he -- he pled.

9 Q Do you recall Mr. Cook asking you for a
10 bond hearing?

11 A I be-- he asked -- I believe he asked Mr.
12 Harvin for a bond hearing. The only -- only way I
13 can -- that I believe that is that he did -- that he
14 asked for that, is that in the notes in our file,
15 and this is going back into like maybe 2020, that
16 there was a note from our admin that said that
17 Mr. Cook had called about a bond hearing. But at
18 the time I came on board in 2021, it was clear to me
19 that Mr. Cook was gonna be on the trial docket for
20 that year. Based on the nature of the charges,
21 based on the fact that we were getting set to go to
22 trial, I advised Mr. Cook that while nothing is
23 impossible, that I viewed his chance of getting a
24 bond at zero point zero percent.

25 Q Do you recall -- well, can you discuss the

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1 plea negotiation process from you're -- from the
2 perspective of your representation?

3 A Yes. We -- since -- and I told this to
4 all of my clients that I took on in 2021. During
5 the first meeting, I -- I tried to avoid getting
6 into the plea. I wanted it to be a meeting where
7 they met me. I introduced myself to them and then I
8 got their version of the story. And so the first
9 meeting I had with Mr. Cook, that's what we did. We
10 went through the case file. You know, I introduced
11 myself to him. I wanted to get his side of the
12 story. I made him aware that there was an offer out
13 on his case and that we would discuss it, but I
14 wanted time to review it because all of these
15 meetings happened sometime in June. I came on board
16 in May so I started meeting with him routinely in
17 the summer months.

18 Once we started getting into the case and
19 getting into the actual plea offers, I did discuss
20 it with Solicitor Anderson and he was very firm that
21 this was the best, first, and last, and only offer
22 and that either Mr. Cook could accept it or we could
23 proceed to trial. I believe -- and I believe that
24 there was a few times where we brought Mr. Cook over
25 to go forward with a plea, but he would -- typically

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1 the day of, he would, he would back out. When we
2 got to the -- when we got to the October time frame,
3 it was made clear to me that we were gonna be trial
4 one; and if we weren't trial one, we'd be trial on
5 the next month. And so my reason for bringing Mr.
6 Cook over is that I needed to -- needed a definite
7 answer whether or not he wanted to plea because we
8 needed to start getting heavy into our trial prep;
9 and he indicated after we had that meeting and he
10 talked to his pastor, that he was ready to go
11 forward with a plea.

12 Q All right. And do you recall any
13 interaction in which you revealed that there was a
14 ten-year plea offer with Mr. John Dan Cook?

15 A I believe there was a offer from a
16 previous solicitor. I believe that at some point in
17 time, which Solicitor Anderson may be able to
18 clarify this. I believe there was that Solicitor
19 Pierce that's now in Clarendon County might have
20 made an offer to Mr. Cook, but it was made very
21 clear to Mr. Cook 'cause I went to speak to
22 Solicitor Anderson about this, that that offer was
23 not made by Mr. Anderson and that that was not the
24 offer of the case and that he wasn't -- what he had
25 put forward was the only first, last, and only offer

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1 that Mr. Cook had received. And so we -- and that
2 was made clear to Mr. Cook pretty early on in the
3 process.

4 Q And do you -- did you ever promise
5 Mr. Cook that he would only do a certain percentage
6 of his sentence?

7 A No. We had -- the conversation that Mr.
8 Cook and I had and I think Judge Curtis words, that
9 we were -- we were -- we had not done a well enough
10 job explaining to him that once he got out, that
11 he's -- that he would be -- there's a potential
12 classification, and so before he executed a plea,
13 Mr. Cook and I took a little more time to go through
14 the statute to make sure that he understood the
15 process of that he would have to potentially go
16 through after he got released. But I made a point
17 that I always go worst case scenario so I always
18 told my clients what the max term they could be
19 facing if they pled; and once we get to the plea,
20 then we have to calculate days of time served, all
21 of, you know, all that. But Mr. Cook was very aware
22 of what the sentence was and how much time served he
23 had and in our following conversation, as SCDC will
24 calculate the exact number of days.

25 Q And do you feel like if you had more time

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1 to prepare, you would have been better able to
2 represent him at a trial?

3 A I feel -- I felt as if, if we, if we had
4 three-years to prep this case we -- it should have
5 been a plea. The evidence was overwhelming. There
6 was a -- there was pretty much a confession. The
7 statements by the minors were very, very descriptive
8 and they actually -- all of the statements from the
9 victim and the other witnesses all were in alignment
10 where there wasn't much that from a defense
11 standpoint that we could poke holes in. I informed
12 Mr. Cook what, you know, what I believed could be
13 our only strategy and I just told him I'd felt like
14 in my professional opinion that, that it would -- it
15 would be extremely unsuccessful, and I also knew
16 that there were -- that the plea offer that he had
17 was only to one charge and he could be facing a
18 multitude of other charges and that it was in his
19 best interest to plead. But if he wanted to try the
20 case, part of the reason why I got into this job is
21 that I like to try cases, that I would have tried
22 it; but I did not believe that was in his best
23 interest.

24 Q All right. And you mentioned a defense
25 strategy that you did not think would be successful.

SW - W. BARR - CROSS

1 Can you elaborate on what that was?

2 A Well, Mr. Cook's opinion was that he was
3 quote/unquote, entrapped by his minor niece where
4 that she had flirted with him and she had put him in
5 a bad position and that he -- he was just trying to
6 educate her on sex and things like that. I just
7 felt like that that would not be a winning argument
8 with the jury.

9 Q All right. Thank you, Mr. Barr. I think
10 that's all the questions I have for you right now.

11 THE COURT: Mr. Griffith.

12 MR. GRIFFITH: May it please the Court, Your
13 Honor.

14 **CROSS - EXAMINATION**

15 BY MR. GRIFFITH:

16 Q Mr. Barr, I just have a couple of
17 questions. So this was in Williamsburg County?

18 A That's correct.

19 Q And your office is in the courthouse in
20 Williamsburg County?

21 A At that time it was.

22 Q Okay. And the jail is like half a mile
23 from the courthouse; isn't that right?

24 A Yes, sir.

25 Q Okay, all right. You said that the jail

SW - W. BARR - CROSS

1 brought him over and you sat with him for
2 three-hours; ---

3 A It was ---

4 Q ---is that correct?

5 A ---between two to three-hours, yes.

6 Q Okay. So you also said that you saw an
7 offer from the previous solicitor for ten-years; is
8 that correct?

9 A I believe I saw a sentencing sheet which I
10 went immediately and I talked to the solicitor about
11 it, and he was not aware of it; but there was --
12 there were multiple sentencing sheets in the file.
13 And the reason why I bring that up is because we had
14 -- and I say "we," 'cause I'm a part of the Public
15 Defender Office but. Mr. Cook had employed a
16 strategy of saying he was gonna agree to a plea,
17 they would get to the time of the plea and he would
18 back out. And so there were multiple -- when I see
19 multiple sentencing sheets in a file, to me that
20 indicates that there's been offers 'cause every time
21 there's an offer and the solicitor -- and I don't
22 want to speak for them -- they believe that the
23 client's going to plead, they'll go ahead and
24 prepare the sentencing sheet, they'll give it to
25 defense attorney. And there were multiple ones in

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1 there, which to me, indicated over the course of
2 this case that Mr. Cook had at some way or shape or
3 form represented to his attorneys that he was going
4 to -- he was gonna plead and then he had backed out.

5 Part of the reason why I brought him -- I had
6 the jail bring him on an off-day, I mean off-day, a
7 nonappearance day, is that I did not want Mr. Cook
8 to feel pressured by the surroundings. I didn't
9 want him to feel like that he was under time
10 pressure because during general appearances when we
11 have those, typically as I said before, I meet with
12 dozens of clients on those days so the meetings
13 cannot be but for so long so I wanted make sure that
14 Mr. Cook had my full attention. So we had him come
15 over. We spent a great deal of time. And when I
16 say "time," we watched his entire interview with law
17 enforcement and we didn't watch it as you would
18 watch a movie, we would watch it, we would stop it,
19 we would talk about it, we would play it some more.
20 We would -- I would give Mr. Cook, you know, my
21 opinion. I told Mr. Cook, Mr. Cook, if you go to
22 trial, this exact video is going to be what the
23 State is going to put into evidence and we need to
24 talk about what our arguments will be to combat
25 this. So we spent a great deal of time going over

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1 it because, as I said before, I had -- it was my
2 opinion that Mr. Cook had had these conversations
3 before, but I wanted make certain this time that
4 there was no -- that there was no way that he could
5 say that he was pressured. There was no way he
6 could say he didn't have enough time. There's no
7 way he could say anything other than we had a
8 full-on discussion and strategy about my case. And
9 like I said, I even allowed him to make phone calls
10 to his church members to discuss it further; and I
11 believe even when he made those phone calls, at one
12 point I stepped away so that he could have privacy
13 so he still would not feel that he was under any
14 pressure to make a decision.

15 Q Okay. On these sentencing sheets, did
16 they indicate on them a number of years as a
17 recommendation or anything or?

18 A Well, the one we were working off of, I
19 believe, was a recommendation of 25-years.

20 Q You didn't see one for ten-years?

21 A There was one that I saw that was less
22 than -- that was less than 25. It could have been
23 ten; but what the one that I saw that was less than
24 25, I immediately talked to the State about it and
25 they made it clear to me -- I made it clear to Mr.

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1 Cook, that this was not the offer that was on the
2 table, that the offer that was on the table was the
3 one that he ultimately accepted.

4 Q So you talked to Mr. Anderson when you say
5 the "State"? Is that who you're talking about?

6 A That's correct.

7 Q And so did he indicate why he was not
8 willing to go along with a previous offer that had
9 been made?

10 A Well, I think there was a -- there was an
11 issue where couldn't substantiate that that offer
12 was ever made; it was a sentencing sheet. But based
13 on the deck of cards that Mr. Anderson had, there
14 was really no reason for him to make a lesser offer.

15 Q So, well, my point is, what I'm asking is,
16 you're saying that it was from a previous solicitor
17 that he was not willing to honor the offer by a
18 previous solicitor?

19 A I believe this was issued to me was this
20 is the offer that I've extended and this is the only
21 offer that's on the table, and so I just made
22 Mr. Cook aware of that so that we could move past
23 that point.

24 Q Okay.

25 MR. GRIFFITH: I have no further questions,

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1 Your Honor.

2 THE COURT: Any redirect?

3 MR. JONES: Not from the State, Your Honor.

4 THE COURT: Thank you, sir.

5 Mr. Jones.

6 MR. JONES: And, Your Honor, I believe Mr. Barr
7 can just get to his next appointment so if there's
8 no objection from ---

9 MR. GRIFFITH: No objection.

10 THE COURT: All right, Mr. Barr, you are free
11 to go. Thank you, sir.

12 THE WITNESS: Thank you, Judge.

13 MR. JONES: I beg the Court's indulgence for a
14 moment.

15 THE COURT: Yes, sir.

16 MR. JONES: Thank you, Your Honor. The State
17 at this point would call -- excuse me one moment.
18 Mr. Doward Harvin.

19 THE COURT: Mr. Harvin, please come forward,
20 sir.

21 THE CLERK: Place your left hand on the Bible
22 and raise your right hand and state your name.

23 THE WITNESS: Doward Harvin.

24 WHEREUPON,

25 **DOWARD HARVIN,**

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1 having been duly sworn by the clerk, testified
2 as follows:

3 THE CLERK: Thank you much, sir. Step around
4 please. State your name for the record and spell
5 your last name please.

6 THE WITNESS: Yes. My name is Doward. That's
7 -- and I'm gonna spell my first name 'cause it's
8 weird. It's Doward, D-O-W-A-R-D. And my last name
9 Harvin, H-A-R-V-I-N.

10 DIRECT EXAMINATION

11 BY MR. JONES:

12 Q Thank you, Mr. Harvin. Briefly, how long
13 have you been practicing law?

14 A I think somewhere between 14 and 15-years.

15 Q About how much of that has been criminal?

16 A All of it. I started as a solicitor; and
17 then after about two-years as a solicitor, I spent
18 ten-years as a public defender and now I handle
19 private matters in the criminal sector as well.

20 Q All right. And do you remember being
21 involved with Mr. Cook's case?

22 A I do. I do. It seems like it might have
23 been three or four-years ago when I left the Public
24 Defender's Office so I -- I vividly remember
25 Mr. Cook.

SW - D. HARVIN - DIRECT

1 Q All right. Do you remember how many times
2 you met with Mr. Cook?

3 A I don't know exactly how many times, but
4 definitely more than once. We actually talked about
5 his case in great detail and every step of his
6 particular case. One thing, you know, is mentioned
7 the bond hearing issue that I heard that get
8 testified to so. I filed a motion for a bond for
9 Mr. Cook. I think we even had brought him over for
10 a bond; but when you have charges that have
11 allegations that you raped women for several decades
12 in your family, when you have confessions of those
13 rapes also as evidence, I'm gonna say what Virgil
14 wouldn't say, it would be impossible to get a bond.
15 And so, you know, what you hope in that situation is
16 that you gather some information during discovery
17 that helps at some point in time to present a
18 adequate argument in front of a judge for a bond.
19 That did not happen in this situation, but Mr. Cook
20 was well aware of that situation as we talked about
21 kind of the strategy and how we would move forward.

22 Q All right. Now we've heard some testimony
23 earlier from Mr. Cook about a ten-year plea offer?

24 A Yeah.

25 Q And if you would explain that.

SW - D. HARVIN - DIRECT

1 A Yeah. So generally what I would do if I'm
2 given a plea offer from the State, we may send a
3 letter or I may meet with somebody in person if I
4 think it's a plea that we can actually have a
5 conversation about. As in this case, every plea
6 offer is gonna be formerly made. I wouldn't -- I
7 wouldn't be in the process of putting together a
8 plea offer and -- and in the process of doing so
9 send over bits and pieces like it shows, you know,
10 Mr. Cook had several charges; and so if there were
11 sentencing sheets in the file, that doesn't
12 necessarily mean that there were plea offers and
13 that doesn't necessarily mean that there was a
14 ten-year plea offer. What would be indicative of
15 there being a plea offer is something that says that
16 there is a plea offer of this number of years for
17 this particular charge. So if that was never sent,
18 then there was never a plea offer of that particular
19 number for that particular charge.

20 What I didn't hear in the testimony is what
21 they were talking about out of the ten charges that
22 they saw a sentencing sheet for ten-years. I'll be
23 interested to see that. But there was never a time
24 during my representation, and I beg, plead,
25 borrowed, did everything I could do to help Mr. Cook

SW - D. HARVIN - CROSS

1 that there was a ten-year plea offer; it never
2 existed. The State was very firm from the beginning
3 that there was no way that they were going to offer
4 anything less than him pleading to the sexual
5 assault of the minor child.

6 Q All right. Mr. Harvin, I believe that's
7 all the questions I have for you. Thank you.

8 A Thank you.

9 THE COURT: Mr. Griffith.

10 MR. GRIFFITH: Thank you, Your Honor. May it
11 please the Court.

12 CROSS - EXAMINATION

13 BY MR. GRIFFITH:

14 Q Mr. Harvin, thank you for being here.

15 A My pleasure.

16 Q Was Mr. Anderson, Mr. Warren Anderson, the
17 solicitor when you took on the case or do you recall
18 there was a solicitor before that?

19 A I think Warren was in the office. Now
20 Darla may have come for some period of time. Darla
21 Pierce ---

22 Q Yes.

23 A --- may have been there for some period of
24 time. I think she may have replaced attorney Julie
25 Shivers, but. So attorney Pierce, Solicitor Pierce

SW - D. HARVIN - CROSS

1 might have been there for a period of time.

2 Q And you don't recall any prior plea offer?

3 A I do not. The only plea offer that I'm
4 aware of is the plea to a 25-year sentence. Like I
5 said, if there were like sentencing sheets, if there
6 were like -- for instance, if he had a CSC second
7 and she said, hey I'll, -- or somebody said, hey,
8 I'll give him ten to that but he still has to plead
9 to the 25-year sentence, it's not a ten-year plea
10 offer, it's still very clearly a 25-year plea offer
11 that's cupping in other charges. And so typically
12 when you're working on a multiple rape case like
13 this one and you have multiple victims, you would
14 move through them one at that time; and once I got a
15 plea offer that I could present to him, then that's
16 when I would present it to him.

17 Q So basically he might have an offer of
18 25-years on one person and then 10-years on another
19 person?

20 A That could very well be possible.

21 Q Maybe that's what he saw. Is that what
22 you're talking about?

23 A And I would love to see what -- what you
24 all were talking about, these phantom documents, but
25 that could very well be what he saw. But I think

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1 what's important is that, you know, he was given
2 information about what the plea offer actually was,
3 which was a 25-year plea offer, which would have
4 kept him from serving 250-years to life in prison
5 for raping women for several decades, women in his
6 family.

7 MR. GRIFFITH: I don't have any further
8 questions, Your Honor.

9 MR. JONES: Nothing from the State, Your Honor.

10 THE COURT: Mr. Harvin, thank you. You may
11 step down.

12 THE WITNESS: Thank you, Judge.

13 MR. JONES: Your Honor, the State would now
14 call Mr. Warren Anderson.

15 THE COURT: All right. Mr. Anderson, please
16 come forward. And, Mr. Anderson, you are still
17 under oath.

18 (Sworn in earlier hearing.)

19 THE WITNESS: Yes, Your Honor.

20 **D I R E C T E X A M I N A T I O N**

21 BY MR. JONES:

22 Q Thank you, Mr. Anderson. Could you
23 briefly describe the plea negotiation process in Mr.
24 Cook's case?

25 A Yeah. There was never any offer besides

SW - W. ANDERSON - DIRECT

1 25-years from me. I reviewed the case file this
2 morning to see if Ms. Pierce had ever made any kind
3 of offer on this case. The only notes that
4 Ms. Pierce wrote in the brief time that she was
5 assigned this case is one of the victim's phone
6 numbers. What Mr. Harvin described as there being a
7 sentencing sheet for one charge or another charge is
8 very accurate, if Mr. Cook had gone forward and not
9 pled guilty to the 25-year offer, which is my
10 recollection what happened. There would be
11 sentencing sheets for all of his charges there and
12 some of the charges carry less than 25-years and
13 that could be the confusion. But I don't think that
14 there's -- what was testified to by Mr. Cook is that
15 there was a 10-year offer conveyed to him; that is
16 simply not the case. Mr. Cook is -- I'm 15 days
17 short of 10-years prosecuting for the State. He is
18 the worst pedophile I've seen in my 10-years of
19 prosecuting. There's no way I would offer him
20 10-years.

21 Q Thank you. I realize you are on the
22 opposite side, but what was your impression of the
23 level of preparation that Mr. Harvin and Mr. Barr
24 underwent?

25 A I know that -- and I can't talk about what

SW - W. ANDERSON - DIRECT

1 they talked about, but I do know that Mr. Harvin did
2 file the bond hearing motion that has been a subject
3 to debate at this hearing. We came forward. I
4 brought the victims in there. There's multiple
5 victims in this case. He -- he raped several
6 children in his family. Some of them are adults
7 now; some of them are still children. One of them
8 came all the way from Guam to be at the bond
9 hearing. Mr. Cook backed out of the bond hearing
10 when he realized that the children were there, or
11 the child was there. We did not go forward with the
12 bond hearing because they didn't want to.

13 Q All right.

14 A Oh, and your question was what I saw them
15 prepare. Mr. Barr testified that he brought him
16 over and had a meeting with him in the courtroom. I
17 can tell you that I know that existed or that
18 happened because they asked me -- or Mr. Barr asked
19 me to come help him with the computer to show this
20 specific point to one of the interviews where
21 Mr. Cook describes putting his mouth on a 10-year
22 old girl's vagina.

23 Q And so you -- your self-experience that
24 Mr. Barr was, was going over the interviews with Mr.
25 Cook?

SW - W. ANDERSON - CROSS

1 A Yes, I walked into the courtroom. They
2 were at the defense's table. The file was spread
3 out before them. That's, I think, the first time
4 that -- no, it's not the first time; it was the
5 first time I'd seen him in -- with Mr. Barr going
6 over the case. They -- I showed Mr. Barr what he
7 wanted to see on the computer and I left. They were
8 definitely going over the case that day.

9 Q All right. Thank you, Mr. Anderson. I
10 think that's all I have for you.

11 THE COURT: Mr. Griffith.

12 MR. JONES: Mr. Anderson, Mr. Griffith ---

13 THE WITNESS: Oh, sorry, I'm not used to
14 testifying.

15 THE COURT: Cross-examination.

16 **C R O S S - E X A M I N A T I O N**

17 BY MR. GRIFFITH:

18 Q I'd like to treat this as a hostile
19 witness trying to get out of testifying.

20 Q Again, I apologize for that.

21 Q So Mr. Anderson, you -- you never made an
22 offer of 10-years; is that correct?

23 A And yes, that's commemorated by my emails.
24 I got a email from Mr. Barr on 8/4/2021 about this
25 case and another case. And then I'm skipping to the

SW - W. ANDERSON - CROSS

1 part where I start talking about Mr. Cook. "For
2 Cook, the offer is 25. I disagree that he only
3 committed CSC second with a minor. In his interview
4 he describes putting his mouth on the private parts
5 of a child under 11 years of age. I have pasted the
6 relevant part of the statute below. I don't have
7 any wiggle room on the offer of the minimum of
8 25-years. He will also gain the benefit of only
9 pleading to one of the litany of charges he has
10 against him." That's an email I sent to Mr. Barr
11 about this case on 8/4/2021.

12 Q And you also corroborate Mr. Barr's
13 contention that he spent significant time speaking
14 with Mr. Cook?

15 A And I don't know if it was significant
16 time. I know that the meeting occurred because I
17 went in the courtroom and saw them.

18 MR. GRIFFITH: I have no further questions,
19 Your Honor.

20 MR. JONES: Nothing from the State, Your Honor.

21 THE COURT: Thank you, Mr. Anderson.

22 MR. JONES: Your Honor, the State rests.

23 THE COURT: All right. Mr. Griffith, anything
24 in summation, sir?

25 MR. GRIFFITH: Nothing, Your Honor.

1 THE COURT: Anything from the State that need
2 to be highlighted, Mr. Jones?

3 MR. JONES: Just, Your Honor, that the State
4 submits Mr. Cook has not met his burden of proof as
5 to any of the allegations he raised. I believe that
6 the testimony shown today, the credible testimony of
7 both his attorneys and of Mr. Anderson was that they
8 were as prepared as they could be and that
9 additional time would not have made difference, nor
10 have I seen any indication of any deficiency of by
11 either of the attorneys so since there was not a
12 deficiency nor prejudice, the State argues that
13 there was no ground for post-conviction relief.

14 THE COURT: Thank you, Mr. Jones. I'm gonna
15 take this matter under advisement, review the
16 relevant portions of the transcript; and once I make
17 a decision, I will inform the parties of decision by
18 email and direct the prevailing party to prepare the
19 appropriate order. Thank you.

20

21 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 26th day of December, 2023.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

John Dan Cook, #386297

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
)
)

) Case No.: 2022-CP-45-00328
)
)
)

) **ORDER OF DISMISSAL**
)
)
)
)
)
)

This matter comes before the Court by way of an application for post-conviction relief ("PCR") filed by John Dan Cook ("Applicant") on August 15, 2022. The Court convened an evidentiary hearing into the matter on June 13, 2023, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy L. Griffith, Esq. Zachary W. Jones, of the South Carolina Attorney General's Office, represented Respondent.

After reviewing all records and evidence before the Court, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. In September of 2020, the Williamsburg County Grand Jury indicted Applicant for disseminating harmful material to a minor, sexual exploitation of a minor, criminal sexual conduct ("CSC") with a minor in the third degree, CSC with a minor in the second degree, and seven counts of CSC with a minor in the first degree. (2020-GS-45-00149). In July of 2021, the Williamsburg County Grand Jury indicted Applicant for one count of CSC with a minor in the third degree, three counts of CSC

with a minor in the first degree, disseminating harmful material to a minor and sexual exploitation of a minor. (2021-GS-45-00122). Applicant was represented by Doward Harvin, Esquire, and William J. V. Barr, Esquire (collectively, "Counsel"). Assistant Solicitor Warren S. Anderson, of the Third Circuit Solicitor's Office, prosecuted the case. On October 19, 2021, Applicant pled guilty to one count of CSC with a minor in the first degree before the Honorable Kristi F. Curtis, circuit court judge. Following a thorough plea colloquy, Judge Curtis accepted Applicant's guilty plea and sentenced him to twenty-five years' imprisonment, pursuant to the State's recommendation. Applicant did not pursue a direct appeal or otherwise challenge his plea or sentence until the filing of this instant post-conviction relief action.

Present Application

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

10(a) Insufficient Counsel. I requested new Counsel be appointed for me, but was denied by the Judge.

11(a): I was held in County Jail for nearly 2 ½ years, going up for bond 1 time, even though I requested to my lawyer that I would like to go up for another bond hearing. I know of no motions that were filed on my behalf. Then in March or April of 2019 my lawyer Doward Harvin stepped down from the Public Defender's Office. In June of 2019 I was given Mr. William Joseph Virgil Barr as my lawyer and asked him for a bond hearing but instead was asked to sign a plea deal. Upon standing in front of the judge on Oct. 18, 2021 I asked the Judge for new counsel, telling the judge that I didn't feel my lawyer had done everything for me. I was told no, that I could not fire my lawyer because I didn't like them. I was given 14 hours by the judge to accept the plea deal or go to trial in 2 weeks with the lawyer I just tried to fire. Having felt before that nothing had been done on my behalf, I really felt my back was against the wall and so was persuaded to sign the plea deal. I was taken back in front of the judge on Oct. 19, 2021 for sentencing. My lawyer

never spoke to me again after that or offered any advice as to what legal alternatives I may have had including appeal.

Applicant requests relief as follows:

“Any relief, including a reduction in sentence, any relief regarding the stipulations of my release and counseling for me.”

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcripts of Applicant's plea proceeding, the records of the Williamsburg County Clerk of Court regarding the subject convictions, and the application for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and

matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

Applicant argues Counsel were ineffective because they did not request an additional bond hearing or file any motions on his behalf. He further claims he felt his “back was against the wall” because Judge Curtis would not grant him a new lawyer, causing him to enter a guilty plea. In addition, at the evidentiary hearing, Applicant claimed the State's first plea offer was for ten years' imprisonment, but Counsel failed to communicate that plea offer to him before it expired. The Court finds these allegations of ineffective assistance are meritless.

The record includes the transcript of Judge Curtis's plea colloquy with Applicant, in which Applicant indicated that he had discussed the decision to plead guilty with Counsel, that Counsel had answered all of his questions, that he was satisfied with Counsel's assistance, that he did not need any additional time to confer with Counsel, that he had reviewed the States evidence with Counsel, and that he was not being coerced into pleading guilty in any way. (Tr. pp.3-7).

Applicant's sworn statements during the plea colloquy "carry a strong presumption of verity," and he bears the burden to show valid reasons why he should now be permitted to depart from the truth of those statements. *Blackledge*, 431 U.S. at 73-74; *Dalton*, 376 S.C. at 137-38, 654 S.E.2d at 874.

At the evidentiary hearing, Counsel Barr testified he met with Applicant multiple times prior to the guilty plea, went over the discovery and Applicant's version of what happened, and discussed the plea offer. Counsel Barr testified the evidence against Applicant was strong because Applicant had made statements that were tantamount to a confession, claiming that something of a sexual nature had happened between him and his minor victim, but that he was merely trying to "educate" her about sex. Counsel Barr advised Applicant that he had no chance of getting a bond due to the seriousness of the crimes he was charged with. Counsel Barr did not believe they would have a viable defense strategy at trial, and he testified that he thought the plea offer was in Applicant's best interest. Counsel Barr further testified that Applicant had a lengthy pattern of promising to enter a guilty plea, then withdrawing at the last minute; the solicitor was clear that Applicant was not going to get a better offer. Counsel Barr recalled seeing a sentencing sheet in the file that reflected a less-than-twenty-five-year sentence; he asked the solicitor about it and was told that was not the offer that was on the table.

Counsel Harvin testified that he represented Applicant before leaving the Public Defender's office, at which time Counsel Barr took over representation. Counsel Harvin testified that he met Applicant multiple times and talked about the case in great detail. He filed a motion for a bond, but he believed getting a bond would be impossible because Applicant had confessed to raping several members of his family. Counsel Harvin testified that there was never a ten-year plea offer, or any offer to plead to anything less than CSC with a minor in the first degree, which carries a twenty-five year minimum sentence; however, it was possible that an earlier offer included an additional ten-year sentence on one of the other charges, which could be where the ten-year sentencing sheet came from.

Assistant Solicitor Warren Anderson testified as well. He testified that sentencing sheets had been prepared for some of the less serious charges that were ultimately dismissed as part of the plea bargain, but that he never made an offer for less than twenty-five years. He read from an email in his file, which reflected that there was "no way" the State would offer less than the mandatory minimum of twenty-five years.

The Court finds Applicant's testimony at the evidentiary hearing, to the extent it contradicts the testimony of Counsel and Applicant's own sworn statements during the plea colloquy, is not credible. The Court further finds the testimony of Counsel and Assistant Solicitor Anderson mutually consistent and highly credible. Based on the record and the credible testimony presented at the evidentiary hearing, the Court finds Applicant's decision to plead guilty was knowingly, voluntarily, and intelligently made. The Court further finds Counsel did not fail to communicate any plea offers. Therefore, Applicant has not met his burden of proving either deficiency or prejudice regarding Counsel's performance. Accordingly, the Court finds this allegation must be denied and dismissed with prejudice.

In addition, Applicant failed to present any evidence at the evidentiary hearing regarding Counsel's alleged failure to discuss an appeal with him. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal only when there is reason to think (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for an appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). A highly relevant factor in this analysis is whether the conviction follows a guilty plea, because a guilty plea reduces the scope of appealable issues and indicates that the defendant seeks an end to further judicial proceedings. *Id.* In addition, where the sentencing court clearly instructs a defendant about his appeal rights, counsel might reasonably decide he need not repeat that information. *Id.* at 479–80.

Applicant has not alleged any non-frivolous grounds for appealing, nor has he claimed that he ever demonstrated an interest in appealing to Counsel. Furthermore, Applicant pled guilty, suggesting he sought an end to judicial proceedings. Finally, Judge Curtis advised Applicant of his appeal rights on the record. (Tr. p.13, lines 20–24). Accordingly, the Court finds no merit to Applicant's claim that Counsel were ineffective for failing to discuss an appeal with him.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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.

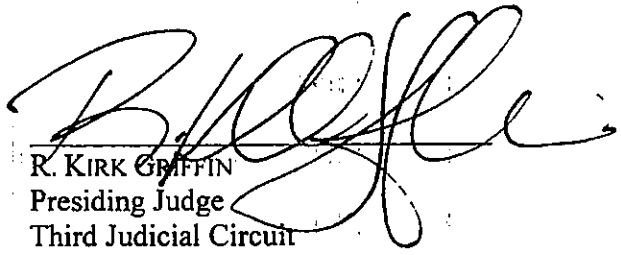
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453,

409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 3rd day of October, 2023.


R. KIRK GRIFFIN
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

WITNESSES

Williamsburg County Sheriff
Jalisa D. Brown

DOCKET NO. 2020-GS-45-0149

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

September TERM 2020

THE STATE

vs.

JOHN DAN COOK

ARREST WARRANT NUMBER

2019A4510100205	2019A4510100206
2019A4510100207	2019A4510100211
2019A4510100208	2019A4510100209
2019A4510100210	2019A4510100212
2019A4510100213	2019A4510100305
2019A4510100306	

Indictment for

Disseminating Harmful Material to a Minor
Sexual Exploitation of a Minor
Criminal Sexual Conduct with a Minor, 3rd Degree
Criminal Sexual Conduct with a Minor, 2nd Degree
Criminal Sexual Conduct with a Minor, 1st Degree (7 counts)

ACTION OF GRAND JURY

TRUE BILL

Date: 9/10/20

Karon Jackson

Foreperson of Grand Jury

Date: 9/10/20

VERDICT

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

Disseminating Harmful Material to a Minor
 Sexual Exploitation of a Minor
 Criminal Sexual Conduct with a Minor, 3rd Degree
 Criminal Sexual Conduct with a Minor, 2nd Degree
 Criminal Sexual Conduct with a Minor, 1st Degree (7 counts)

At a Court of General Sessions, convened on September 10, 2020 the Grand Jurors of
 WILLIAMSBURG County present upon their oath:

COUNT ONE – DISSEMINATING HARMFUL MATERIAL TO MINOR

That in Williamsburg County, South Carolina, on or between the dates of February 14, 2018 and November 17, 2018, the Defendant, **JOHN DAN COOK**, with knowledge of the character or content of the performance, did allow a minor to review or peruse material that is harmful to minors, to wit: showed pornography and sexual items to a minor child who was approximately 11 years of age, all in violation of Section 16-15-385 (B), Code of Laws of South Carolina, (1976, as amended).

COUNT TWO – SEXUAL EXPLOITATION OF A MINOR

That in Williamsburg County, South Carolina, on or between February 14, 2018 through November 17, 2018, knowing the character or content of the material, the Defendant, **JOHN DAN COOK**, did record, photograph, film, develop, duplicate, produce, or create digital electronic file material that contained a visual representation of a minor engaged in sexual activity; or did distribute, transport, exhibit, receive, sell, purchase, exchange, or solicit material that contained a visual representation of a minor engaged in sexual activity, to wit: the Defendant did photograph a minor child while she was nude; all in violation of Section 16-15-405, Code of Laws of South Carolina, (1976, as amended).

COUNT THREE – CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

That in Williamsburg County, South Carolina, October 10, 1978 through October 10, 1992, the defendant, **JOHN DAN COOK**, did commit a non-consensual sexual battery upon a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: committed a lewdly and lascivious act upon the body of a minor child, date of birth [REDACTED] 1976, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant or minor child, and that the defendant, date of birth [REDACTED] 1966, was older than 16 years of age but was less than 19 years of age; in violation of Section 16-3-655(C), South Carolina Code of Laws, (1976, as amended).

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2020-GS-45-0149
WITH THE AFORESAID NAME OF JOHN DAN COOK SHOWN THEREON:

COUNT FOUR – CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

That in Williamsburg County, South Carolina, February 14, 2018 through November 17, 2018, the defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a non-consensual sexual battery upon a minor who was less than fourteen (14) years of age but who was at least eleven (11) years of age, to wit: allowed a minor child, date of birth [REDACTED] 2007, to masturbate his penis with her hand causing him to ejaculate with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the Defendant or minor child; in violation of Section 16-3-655(B), South Carolina Code of Laws, (1976, as amended).

COUNT FIVE – CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of February 14, 2018 and November 17, 2018, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 2007), to wit: performed oral intercourse upon a minor child's vaginal area, penetrated her vaginal area with his fingers and penis, made the minor child masturbate his penis with her hand, and penetrated her anal area with his penis, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT SIX – CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of February 14, 2018 and November 17, 2018, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 2007), to wit: performed oral intercourse upon a minor child's vaginal area, penetrated her vaginal area with his fingers and penis, made the minor child masturbate his penis with her hand, and penetrated her anal area with his penis, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT SEVEN – CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of February 14, 2018 and November 17, 2018, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 2007), to wit: performed oral intercourse upon a minor child's vaginal area and penetrated her vaginal area with his fingers, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2020-GS-45-0149
WITH THE AFORESAID NAME OF JOHN DAN COOK SHOWN THEREON:

COUNT EIGHT - CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of February 14, 2018 and November 17, 2018, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 2007), to wit: performed oral intercourse upon a minor child's vaginal area and penetrated her vaginal area with his tongue, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT NINE - CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of February 14, 2018 and November 17, 2018, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 2007), to wit: kissed her vaginal area, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT TEN - CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of January 19 2001 through January 19, 2002, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 1995), to wit: penetrated her vaginal area with his fingers, kissing and licking the child's buttocks area, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT ELEVEN - CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, on or between the dates of January 19 2001 through January 19, 2002, the Defendant, JOHN DAN COOK, date of birth [REDACTED] 1966, did commit a sexual battery upon a minor who was less than eleven years of age (date of birth [REDACTED] 1995), to wit: penetrated her vaginal area with his fingers, kissing and licking the child's buttocks area, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

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

Solicitor

Edward A. Fin

FILED TO FILE 17:21

WITNESSES

DOCKET NO. 2021-GS-45-0122

Jalisa D. Brown
Williamsburg County Sheriff
Archie Kennedy
Williamsburg County Sheriff's Office

The State of South Carolina
County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

July TERM 2021

THE STATE

vs.

JOHN DAN COOK

ARREST WARRANT NUMBER

2019A4510100305 2019A4510100211

2019A4510100209 2019A4510100206

2019A4510100306 2019A4510100205

ACTION OF GRAND JURY

Indictment for

Criminal sexual conduct with minor - First
degree - (3 Counts), Criminal sexual conduct
with a minor 3rd degree, Disseminating harmful
material to a minor and Sexual exploitation of a
minor

TRUE BILL

Date 7/25/2021

Jas. Wilson
Foreperson of Grand Jury
Date: 7/15/2021

VERDICT

Ernest A. Finney III

Foreperson of Petit Jury
Date:

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

Criminal sexual conduct with minor - First degree - (3 Counts), Criminal sexual conduct with a minor 3rd degree, Disseminating harmful material to a minor and Sexual exploitation of a minor

At a Court of General Sessions, convened on 7-15-2021 the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE-CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, that between the dates of February 14, 2018 and November 17 2018 the Defendant, John Dan Cook, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: he did penetrate the private parts of the juvenile ^{Minor 1} while she was in her bedroom, in violation of Section 16-3-655(A), Code of Laws of South Carolina, 1976, as amended.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, that between the dates of February 14, 2018 and November 17 2018 the Defendant, John Dan Cook, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: he did penetrate the private parts of the juvenile ^{Minor 1} while they were riding a four-wheeler in the woods, in violation of Section 16-3-655(A), Code of Laws of South Carolina, 1976, as amended.

COUNT THREE- CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST DEGREE

That in Williamsburg County, South Carolina, that between the dates of February 14, 2018 and November 17 2018 the Defendant, John Dan Cook, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: he did penetrate the private parts of the juvenile ^{Minor 1} while they were in a truck, in violation of Section 16-3-655(A), Code of Laws of South Carolina, 1976, as amended.

COUNT FOUR-CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

That in Williamsburg County, South Carolina, that between the dates of February 14, 2018 and November 17 2018 the Defendant, John Dan Cook, willfully and lewdly commits or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child, to wit: he did have the juvenile ^{Minor 1} stroke his penis, in violation of Section 16-3-655(C), Code of Laws of South Carolina, 1976, as amended.

COUNT FIVE- SEXUAL EXPLOTATION OF A MINOR

That in Williamsburg County, South Carolina, that between the dates of February 14, 2018 and November 17 2018 knowing the character or content of the material, the Defendant, John Dan Cook, did record, photograph, film, develop, duplicate, produce, or create digital electronic file material that contained a visual representation of a minor engaged in sexual activity; or did distribute, transport, exhibit, receive, sell, purchase, exchange, or solicit material that contained a visual representation of a minor in a state of sexually explicit nudity, to wit: the Defendant, John Dan Cook did photograph the private parts of the juvenile ^{Minor 1}; all in violation of Section 16-15-405, Code of Laws of South Carolina, (1976, as amended).

COUNT SIX- DISSEMINATING HARMFUL MATERIAL TO A MINOR

That in Williamsburg County, South Carolina, on or about February 14, 2018, the Defendant, John Dan Cook, with knowledge of the character or content of the performance, did allow a minor to view a live performance or materials which are harmful to minors, to wit: he did show pornographic movies to juvenile ^{Minor 1} who was less than 11 years of age at the time, all in violation of Section 16-15-385 (B), Code of Laws of South Carolina, (1976, as amended).

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

Solicitor

Ernest A. Finney III

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STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE

VS.

John Dan Cook

AKA:

Race: White Sex: M Age: 55

DOB: SS#

Address:

City, State, Zip: Andrews, SC 29510

DL#: SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020-GS-45-0149

A/W#: 2019A4510100208

Date of Offense: 2/14/2018

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

Anderson, Warren

SC Bar#

Defendant

Barr, William Joseph Virgil
Attorney for Defendant

SCB104883

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$ provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.
days/months 2 years, 4 months, 16 days credit☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS John Dan Cook INDICTMENT/CASE#: 2020-GS-45-0149

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
- ☐ Other: _____

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

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

Payment Term _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$	_____
§14-1-206 (Assessments 107.5 %)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____
TOTAL	\$	\$ 128.75

Clerk of Court/ Deputy Clerk: _____

Court Reporter: _____

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

General Sessions Tracking Sheet
Indictment # 0000GS45

Name: Cook, John Dan

AKA:

Addr: [REDACTED]
Andrews, SC 29510

SSN# [REDACTED]

Sex: M Race: W

DOB: [REDACTED]

DL# [REDACTED]

Warrant/Ticket #: 2019A4510100208

Date of Arrest: 06/05/2019

Date of Offense: 02/14/2018

Date Rcv by Clerk 06/06/2019

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0385/Sex / Criminal sexual conduct
with minor or Attempt - victim under 11 yrs of
age - First degree

Indictment # 0000GS45

8020 - GS - 45 - 0149

Disposition Information

- 1 Transmitted to SOL & SCCA:
- 2 Disp Received by Clerk:
- 3 Date of Disposition:

Disposition	☒ 1. Guilty plea	Explain: _____
	☐ 2. Trial -- guilty	
	☐ 3. Trial -- not guilty	
	☐ 4. Dism/Not Pros/Pros Ended	Explain: _____
	☐ 5. Judicial Commitment	Explain: _____
	☐ 6. Judicial Dismissal	
	☐ 7. Remanded	Explain: _____
	☐ 8. Dismissed at Prelim	
	☐ 9. No Bill	
	☐ 9. Failure to Appear	Explain: _____
	☐ 10. Other	Explain: _____

Judge: Hon. Kristi Curtis

Defense Atty: Virgil Barr

Counts: _____ Code: _____

Sentence: 25 yrs

Court Reporter: Sara B. Todd

Solicitor: Warren Anderson

General Sessions Tracking Sheet
Indictment # 0000GS45

Name: Cook, John Dan

Warrant/Ticket #: 2019A4510100213

AKA:

Date of Arrest: 06/05/2019

Aldr: [REDACTED]
Andrews, SC 29510

Date of Offense: 01/19/2001

Date Rev by Clerk 06/06/2019

Magistrate: Clerk Of Court C P, G S, And Family Court

SSN# [REDACTED]

Counts: Code: 0385/Sex / Criminal sexual conduct
with minor or Attempt - victim under 11 yrs of
age - First degree

Sex: M Race: W

DOB: [REDACTED]

Indictment # 0000GS45

DL# [REDACTED]

2020-GS-45-0149**Disposition Information**

- 1 Transmitted to SOL & SCCA:
- 2 Disp Received by Clerk:
- 3 Date of Disposition: 10-19-2021

- Disposition**
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Judge: _____

Court Reporter: _____

Defense Atty: _____

Solicitor: _____

Counts: _____ Code: _____

Sentence: _____

General Sessions Tracking Sheet
Indictment # 0000GS45

Name: Cook, John Dan

AKA:

Addr: [REDACTED]
Andrews, SC 295105168

SSN# [REDACTED]

Sex: M Race: W

DOB: [REDACTED]

DL# [REDACTED]

Warrant/Ticket #: 2019A4510100212

Date of Arrest: 05/09/2019

Date of Offense: 01/19/2001

Date Rcv by Clerk 05/10/2019

Magistrate: Williams, Delores Franklin

Counts: Code: 0385/Sex / Criminal sexual conduct
with minor or Attempt - victim under 11 yrs of
age - First degree

Indictment # 0000GS45

2020-GS-45-0149

Disposition Information

1 Transmitted to SOL & SCCA:

2 Disp Received by Clerk:

3 Date of Disposition: 10-19-2021

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain: Not Prosecuted based on
Explain: plea to other charge

Explain: _____

Explain: _____

Explain: _____

Judge: _____

Defense Atty: _____

Counts: _____ Code: _____

Sentence: _____

Court Reporter: _____

Solicitor: _____

General Sessions Tracking Sheet
Indictment # 0000GS45

Name: Cook, John Dan

Warrant/Ticket #: 2019A4510100210

AKA:

Date of Arrest: 06/05/2019

Addr: [REDACTED]
Andrews, SC 29510

Date of Offense: 02/06/1987

Date Rev by Clerk 06/06/2019

Magistrate: Clerk Of Court C P, G S, And Family Court

SSN# [REDACTED]

Counts: Code: 0385/Sex / Criminal sexual conduct
with minor or Attempt - victim under 11 yrs of
age - First degree

Sex: M Race: W

DOB: [REDACTED]

Indictment # 0000GS45

DL# [REDACTED]

2020-03-45-0149**Disposition Information**

1 Transmitted to SOL & SCCA:

2 Disp Received by Clerk:

3 Date of Disposition: 10-19-2021

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

*Notle Prosecution based on plea
to other Charge.*

Judge: _____

Court Reporter: _____

Defense Atty: _____

Solicitor: _____

Counts: _____ Code: _____

Sentence: _____

General Sessions Tracking Sheet
Indictment # 0000GS45

Name: Cook, John Dan

AKA:

Addr: [REDACTED]
Andrews, SC 29510

Warrant/Ticket #: 2019A4510100207

Date of Arrest: 06/05/2019

Date of Offense: 10/10/1992

Date Rcv by Clerk 06/06/2019

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 3661/Criminal Sexual Conduct with a
Minor 3rd Degree

Indictment # 0000GS45

2020-GS-45-0149

Disposition Information

- Transmitted to SOL & SCCA:
- Disp Received by Clerk:
- Date of Disposition: 10-19-2021

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Judge:

Defense Atty:

Counts:

Code:

Sentence:

Court Reporter:

Solicitor: