

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case No. 2023-001388

RECEIVED

Sep 20 2024

S.C. SUPREME COURT

THE STATE,

Respondent,

vs.

JASON BRYAN McSWAIN,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

ELIZABETH FRANKLIN-BEST
Appellate Counsel

Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204
(803) 606-9773

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia Street
Spartanburg, SC 29306
(864) 596-2575

ATTORNEYS FOR RESPONDENT

INDEX

Index. i

Motion Requesting Order to be Removed from South Carolina Sex Offender Registry.1

 Motion Exhibit A.7

 Motion Exhibit B.9

 Motion Exhibit C.11

 Motion Exhibit D.13

 Motion Exhibit E.16

 Motion Exhibit F.26

 Motion Exhibit G.34

 Motion Exhibit H.37

 Motion Exhibit I.41

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Jason McSwain,

vs.

State of South Carolina

) IN THE COURT OF GENERAL SESSIONS
) FOR THE SEVENTH JUDICIAL CIRCUIT

) **H002569**

) Indictment Nos: 2003-GS-11-62, 2003-GS-11-63,
) 2003-GS-11-64

) **MOTION REQUESTING ORDER TO BE
) REMOVED FROM SOUTH CAROLINA SEX
) OFFENDER REGISTRY**

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 MAY -3 AM 10:48
BY ANDY W. MORRIS

I. INTRODUCTION

Pursuant to Section 23-3-463 Jason McSwain moves before this honorable Court for an order to be removed from the Sex Offender Registry. Mr. McSwain is not at risk of reoffending, and he does not pose a threat to the public. He has complied with all the requirements of his sentence and has maintained an unblemished criminal record.

II. BACKGROUND

Mr. McSwain began a relationship with ^{Victim 1} when she was sixteen and the bookkeeper for the basketball team he coached. Ex. A, ¶ 4. Her parents discovered the affair and contacted the school, which called law enforcement. Ex. A, ¶ 5. During the investigation, law enforcement learned he previously had relationships with two other students, ^{Victim 2} when she was fifteen years old and ^{Victim 3} when she was sixteen years old. Ex. B, ¶ 4, Ex. C, ¶ 4. ^{Victim 2} initiated the relationship by coming to his house unannounced and repeatedly inviting herself over there. Ex. B, ¶¶ 4 & 5. Her relationship with Mr. McSwain was

roughly two years prior to the investigation. Ex. B, ¶ 5. ^{Victim 3} was in consensual relationship with Mr. McSwain for a few months prior to the investigation.¹ Ex. C, ¶ 4.

Mr. McSwain pled guilty to two-counts of criminal sexual conduct with a minor, second degree, and one count of contributing to the delinquency of a minor on January 12, 2004. Ex. E, Ex. D, ¶ 2. He was sentenced to ten years' imprisonment, which was suspended upon serving two years and five years' probation. Ex. E, Ex. D, ¶ 3. As a result of his convictions, Mr. McSwain was also required to register as a sex offender and has met all registration requirements throughout his time on the registry. Ex. D, ¶ 3. He was allowed to serve the two years at a home detention center, which he completed in January 2006. Ex. D, ¶ 4.

III. GROUNDS FOR REMOVAL

Mr. McSwain successfully completed probation in 2011, which included counseling treatment. Ex. D, ¶ 4. He has had no subsequent arrests or convictions of a sexual offense, or any other legal infraction. Ex. D, ¶ 5. Instead, Mr. McSwain has remained committed to moving past his criminal convictions and creating a life for himself. When ^{Victim 1} was in college, she wanted to reconnect with Mr. McSwain and sought to have his restraints modified so that he would no longer be prohibited from contact with her. Ex. F. With the help and support of her mother (whose report of their relationship led to his convictions), ^{Victim 1} petitioned the court to modify the terms of his sentence, which the court granted. Exs. F, G. Mr. McSwain and ^{Victim 1} eventually married and although they divorced after seven years, they have an amicable relationship and share joint custody of their son. Ex. A, ¶ 7.

¹Victim 3 reconnected with Mr. McSwain when she was around twenty years old, and they had a brief relationship. Ex. C, ¶ 7.

Mr. McSwain still resides in same community and has endeavored to develop his career and remain a devoted father. He served as the Director for Environmental Health and Safety at a corporation that manufactures polymers. Despite a demanding career, he made time to coach his son's basketball team. Mr. McSwain has consistently been an involved father, always present and striving to do what is best for his son. Ex. A, ¶ 10.

However, having to maintain his status on the sex offender registry takes a toll on these achievements. Working for a global corporation that requires worldwide travel was difficult. His passport was revoked, and he was informed he would need to be identified as a sex offender on his passport. Additionally, as his son (and his son's peers) have gotten older, his son has become a target for bullying based on Mr. McSwain's registration. Ex. D, ¶ 12. Some of his son's friends are not allowed to visit Mr. McSwain's house because parents know he is on the registry. And even the little things that make up a childhood have been impacted. Ex. D, ¶ 12. His son enjoys going to the local YMCA, but he does not get to go with his father because Mr. McSwain is not allowed to go. See Ex. D, ¶ 11. Mr. McSwain has repaid his debt to society, he has complied with the registry requirements and maintained non-criminal behavior.

Each of Mr. McSwain's victims have provided affidavits supporting this petition for him to be removed from the registry. Exs. A–C. Furthermore, he has undergone an evaluation with a forensic psychiatrist to determine his risk rate for recidivism. Dr. Donna S. Maddox used the Static 99-R actuarial risk assessment to review Mr. McSwain and he scored a zero. Ex. H, p. 2–3. Based on this score, Dr. Maddox opined that he was at a below average risk of reoffending and assigned him an expected rate of 1.4 percent based on his being in the community over a decade without an offense. Ex. H, 3.

SUPP. R. 3

Pursuant to Section 23-3-462, Mr. McSwain requested his removal from the registry from the South Carolina Law Enforcement Division (SLED). This request was denied on the basis that his request was premature,² not because he posed any remaining threat to the public or that the interests of justice would be served by his continued registration. Ex. I. This denial is inconsistent with his rights under both federal and state constitutions.

On June 9, 2021, the Supreme Court of South Carolina decided *Powell v. Keel*, which held that the requirement for lifetime registration under the Sex Offender Registry Act, was unconstitutional absent opportunity for judicial review to assess the risk of re-offending. 433 S.C. 457, 472, 860 S.E.2d 344, 351–52 (2021). Although it deferred to the General Assembly on crafting the mechanisms of the process due, the Supreme Court “require[d] the hearings at which sex offenders may demonstrate they no longer pose a risk sufficient to justify continued registration be conducted with reasonable promptness and meet standards of fundamental fairness.” *Id.* at 468, 860 S.E.2d at 349. It further held that Powell had received due process because his judicial review after ten years. *See Powell v. Keel*, 433 S.C. 457, 461, 860 S.E.2d 344, 346 (2021).

Yet Mr. McSwain was denied relief based solely on timing because despite the clear evidence he is not at risk of reoffending. Mr. McSwain has consistently registered for the past **nineteen years** and the denial of review, especially considering his insignificant risk of reoffending, is inconsistent with his due process rights under the Fourteenth Amendment to the United States Constitution and Article I, section 3 of the South Carolina Constitution. Having to

² Under section 23-3-430(C)(2), Mr. McSwain is classified as a Tier II offender and section 23-3-462 provides no opportunity for review until twenty-five years from the relevant conviction and registration inception.

wait twenty-five years until obtaining judicial review is not the “reasonable promptness” and “fundamental fairness” required by the Supreme Court to ensure due process. Mr. McSwain has a negligible risk of reoffending and therefore his continued registration does not “bear [] a reasonable relationship to any legitimate interest of government.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). The Supreme Court has stated “a likelihood of re-offending lies at the core of South Carolina’s civil statutory scheme.” *State v. Dykes*, 403 S.C. 499, 507, 744 S.E.2d 505, 510 (2013); *see State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (“[I]t is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes.”). There is no longer a corresponding benefit to society for his registration.

IV. CONCLUSION

Ultimately justice is aggravated by Mr. McSwain’s continued requirement of registration. It is clear there is no danger from which the public must be protected, and any punitive effects are suffered not by Mr. McSwain, but by his minor child. He therefore respectfully requests this Court grant his motion for removal from the registry and terminate his registration requirement.

Respectfully submitted,

/s/Ranee Saunders

Ranee Saunders

Elizabeth Franklin-Best

Elizabeth Franklin-Best, P.C.

3710 Landmark Drive, Suite 113

Columbia, SC 29204

(803) 445-1333

ranee@franklinbestlaw.com

BRANDY W. MCCOY

2023 MAY -3 AM 10:48

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

SUPP. R. 5

elizabeth@franklinbestlaw.com

May 1, 2023

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2023 MAY -3 AM 10:48
BRANDY W. MCBEE

SUPP. R. 6

EXHIBIT A

SUPP. R. 7

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)
_____)

Affidavit of Victim 1

I hereby declare and affirm under penalty of perjury:

- 1) I am Victim 1 and I'm over the age of 18. I am competent to execute this affidavit.
- 2) Jason McSwain is my ex-husband, and I was a victim in his criminal case.
- 3) I have spoken with LaDonna Falvey, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case.
- 4) Jason and I met when I was a 16-year-old student in high school, and he was the basketball coach. I helped as bookkeeper for the basketball team. This is where our relationship started.
- 5) My parents learned of our relationship and contacted the high school. The school then had to turn it over to law enforcement, and I was interviewed by police. Jason McSwain was then arrested. He later pleaded guilty to avoid going to trial and that's when the no-contact order was issued.
- 6) After I graduated from high school, I got back in touch with him and that's when I went through the court process with my parents to have the no-contact order removed. We later got married when I was 19 years old, and our son was born when I was 22 years old.
- 7) We were married for seven years. I would call our divorce a mutual decision. We have joint custody of our son.
- 8) I do not see Jason as a danger to me. We co-parent well together and get along.
- 9) I do not think Jason is a repeat offender and is not a predator against children.
- 10) As a father, he's always involved in our son's life. He's always been around and tried to do what is best for our son. Being on the sex offender registry has been a mark on Jason's back for a long time. For our son and for Jason, I hope that he can be removed from the sex offender registry.

FURTHER AFFIANT SAYETH NAUGHT.

Victim 1

Victim 1

Dated this 18 day of July, 2022.

EXHIBIT B

STATE OF HAWAII)
)
COUNTY OF HONOLULU)
_____)

Affidavit of] Victim 2

I hereby declare and affirm under penalty of perjury:

- 1) I am Victim 2 and I'm over the age of 18. I am competent to execute this affidavit.
- 2) I am one of the victims in Jason McSwain's case after we had an intimate relationship.
- 3) I have spoken with LaDonna Falvey, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case.
- 4) I was 15 years old at the time of my relationship with Jason McSwain. I initiated the relationship with him after driving to his house without him having knowledge I was coming for a visit. I then started calling him often and then he started asking if I could come over to his house.
- 5) I was the first one to make the steps toward the relationship that we had. This relationship happened about two years prior to it coming to light with law enforcement.
- 6) The relationship we had was consensual. I never felt forced to be with him.
- 7) Because it was consensual, I think Jason McSwain should not be on the sex offender registry. I never agreed with him being on the registry because he's not a danger to minors or anyone.
- 8) Jason and I do not talk currently, but it's only because we have both moved on with our lives and not for any negative reason.

FURTHER AFFIANT SAYETH NAUGHT.

Victim 2

Victim 2 _____

Dated this 18 day of July, 2022.

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)

Affidavit of ^{Victim 3}

I hereby declare and affirm under penalty of perjury:

- 1) I am ^{Victim 3} and I'm over the age of 18. I am competent to execute this affidavit.
- 2) I am one of the victims from the criminal case against Jason McSwain.
- 3) I have spoken with LaDonna Falvey, Elizabeth Franklin-Best's paralegal, in connection with what I know about this case.
- 4) I was 16 years old at the time that Jason McSwain and I started talking and becoming flirty in our relationship. This led to us meeting up outside of school and ultimately leading to a sexual relationship. This relationship continued for a few months as I thought it was a special relationship, and I loved him.
- 5) Another victim accused him of a relationship with her and that ultimately ended their relationship with each other. That victim and others gave law enforcement my name as a potential victim.
- 6) I never felt forced to have a relationship with Jason McSwain. I was a willing party in wanting to have a relationship with a guy. I thought I was more mature than I was, but there was never any conscious coercion.
- 7) We later reconnected when I was in college at about 20 years old and rekindled a quick romance, but that fizzled out. Since then, we have not had a relationship for 15 years.
- 8) I do not think Jason McSwain is a threat to the public. I think he made some bad decisions in his past, but he's spent a lot of time suffering for those decisions. There is no reason for anyone to be fearful that he would need to stay on the sex offender registry.

FURTHER AFFIANT SAYETH NAUGHT.

Victim 3

Victim 3

Dated this 29 day of June, 2022.

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

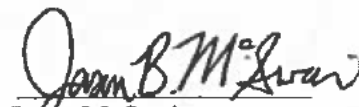
)
)
)

Affidavit of Jason McSwain

I hereby declare and affirm under penalty of perjury:

- 1) I am Jason McSwain, and I am over the age of 18. I am competent to execute this affidavit.
- 2) On January 12, 2004, I pled guilty to two-counts of criminal sexual conduct with a minor, second degree, and one count of contributing to the delinquency of a minor.
- 3) I was sentenced to ten years' imprisonment, suspended on service of two years and five years' probation, and was also required to register as a sex offender.
- 4) I successfully completed my sentence in January 2006 and probation in 2011, which included counseling treatment.
- 5) I have had no subsequent arrests or convictions.
- 6) I have complied with all registry requirements since my conviction.
- 7) I was evaluated for a risk assessment and scored a zero.
- 8) Each of the victims of the crimes has attested that they do not believe me to be a threat to society.
- 9) I have a son with my former wife, Victim 1 who was one of the victims of the crimes for which I was convicted.
- 10) My son is my priority, and his mother and I coparent amicably. I have made an effort to coach his sports and remain active in his life.
- 11) He is old enough now to feel the impact of having a father on the sex offender registry and has had to deal with the restrictions on what I can do.
- 12) He has endured the impact on his relationships with his peers, including friends not being allowed to come over to his father's house as well as bullying.
- 13) Being on the registry effected my career as well and my ability to be a productive member of society.

AFFIANT SAYETH FURTHER NAUGHT.


Jason McSwain

Date this 3rd day of April, 2023

EXHIBIT E

WITNESSES

Christy Poole, GPD

ARREST WARRANT NUMBER

I-063501

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3-13-03

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 03-GS-11- 063

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 13 2003

TERM

THE STATE

vs.

Jason Bryan McSwain

Indictment for

CRIMINAL SEXUAL CONDUCT, WITH A MINOR, SECOND DEGREE

SC Code: 16-3-655 (3)

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

Defendant

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

Defendant

Witness:

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

SUPP. R. 17

ARREST WARRANT

1-063501

STATE OF SOUTH CAROLINA

County/ Municipality of
GAFFNEY

THE STATE
against

JASON BRYAN MCSWAIN

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 510 Weight: 195

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI#: [REDACTED]

Prosecuting Agency: Gaffney Police Department

Prosecuting Officer: C.L. Poole

Offense: Sex/Crim sex conduct w/minor <16-2nd deg

Offense Code: 0397

Code/Ordinance Sec: 16-03-0655(3)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of
GAFFNEY The accused
is to be arrested and brought before me to be dealt with
according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Jason Bryan Mcswain
on 12/14/2002
K.S. Lancaster
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ Municipality of
GAFFNEY

AFFIDAVIT

Form approved by
SC Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant C.L. Poole
being duly sworn deposes and says that defendant JASON BRYAN MCSWAIN
did within this county and state on 03/01/2002

violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of **GAFFNEY**
in the following particulars:

DESCRIPTION OF OFFENSE:

Sex/Crim sex conduct w/minor <16-2nd deg

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

BETWEEN THE DATES OF MARCH 1, 2002 AND OCTOBER 20, 2002, THE DEFENDANT, JASON BRYAN
MCSWAIN, DID ENGAGE IN SEXUAL BATTERY WITH THE VICTIM, WHO WAS UNDER SIXTEEN YEARS OF
AGE, BY HAVING ORAL SEX AND INSERTING HIS FINGERS INTO HER VAGINA. THIS OFFENSE
OCCURRED AT [REDACTED] LOCATED WITHIN THE CITY OF GAFFNEY, COUNTY OF
CHEROKEE SOUTH CAROLINA. PROBABLE CAUSE BASED UPON INVESTIGATION OF THE GAFFNEY
POLICE DEPARTMENT DETECTIVE DIVISION AND STATEMENTS OF VICTIM, WITNESSES AND
DEFENDANT.

CASE NUMBER - 02-042452

Sworn to and subscribed before me
on 12/14/2002
Kayla D. [Signature] (L.S.)
Signature of Issuing Judge

[Signature]
Signature of Affiant
Affiant's Address: 201 N. Limestone Street
Affiant's Telephone: 864-489-8115

STATE OF SOUTH CAROLINA

County/ Municipality of
GAFFNEY

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that on
03/01/2002 defendant JASON BRYAN MCSWAIN
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of **GAFFNEY**) as set forth below:

DESCRIPTION OF OFFENSE:

Sex/Crim sex conduct w/minor <16-2nd deg

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be
dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or

as thereafter is practicable

[Signature] (L.S.)
Signature of Issuing Judge
Judge Code: 456

Judge's Address: 201 N. Limestone Street

Judge's Telephone: 864-487-8524

Issuing Court Magistrate Municipal Circuit

Original

2002 DEC 23 A 9:28
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.

SUPP. R. 18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.

INDICTMENT/CASE#: 03 -GS- 11 - 063

Jason Bryan McSwain

A/W#: 1063501

AKA: _____
Race: W Sex: M Age: 27

Date of Offense: 3-1-02

DOB: _____

S.C. Code §: 16-3-655

Address: _____

Code #: 0 / 3 / 9 / 7

City, State, Zip _____

CASE RESTORED
 SENTENCE
 PLEA TRIAL

DL# _____

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

To: CSC w/ a minor 2nd degree

In violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0, 3, 9, 7

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State Concurrent

ATTEST:

[Signature]
Solicitor

Jason McSwain
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 2 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: with other sentence 2 years may be served AS have Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS

PTUP _____ days/hours Public Service Employment

Recipient: _____	
*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§ 35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§58-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Therapy - NO CONTACT WITH VICTIMS.

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation

Branchy McPhee
Clerk of Court/ Deputy Clerk

Court Reporter: Ante Hattis

PRESIDING JUDGE [Signature]
Judge Code: 1 1 3 1 2
Sentence Date: January 12, 2004

WITNESSES

Tammie L. Bright, CCSO

ARREST WARRANT NUMBER

H-002569

ACTION OF GRAND JURY

VERDICT

For person of Grand Jury

Date: 3-13-03

For person of Petit Jury

Date:

DOCKET NO. 03-GS-11-062

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 13 2003

TERM

THE STATE

vs.

Jason Bryan McSwain

Indictment for

**CRIMINAL SEXUAL CONDUCT, WITH A
MINOR, SECOND DEGREE**

SC Code: 16-3-655 (3)

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

Defendant

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

Defendant

Witness:

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

5
SUPP. R. 20

TRUCE BILL

ARREST WARRANT

H-002569

STATE OF SOUTH CAROLINA

County/ Municipality of CHEROKEE COUNTY

THE STATE

against

JASON MCSWAIN

Address:

Phone:

SSN:

Sex: M Race: W

Height: 5'10"

Weight: 190

DL State: SC

DL #: _____

DOB: _____

Agency ORI#: _____

Prosecuting Agency: SHERIFF'S OFFICE

Prosecuting Officer: DETECTIVE TAMMIE BRIGHT

Offense: CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

Offense Code: _____

Code/Ordinance Sec. 16-3-655

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of _____

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant JASON MCSWAIN on 12-23-02

Signature of Constable/Law Enforcement Officer: Gruecke 33089

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Magistrates Office, Cherokee County Court House GAFFNEY, SC 29340 803 487-2533

STATE OF SOUTH CAROLINA

County/ Municipality of CHEROKEE COUNTY

AFFIDAVIT

Personally appeared before me the affiant DETECTIVE TAMMIE BRIGHT who being duly sworn deposes and says that defendant JASON MCSWAIN did within this county and state on November 25, 2000 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of CHEROKEE COUNTY) in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, JASON MCSWAIN, DID ENGAGE IN SEXUAL BATTERY BY HAVING SEXUAL INTERCOURSE WITH THE VICTIM, Victim 2 THE VICTIM WAS FIFTEEN AND THE DEFENDANT, BEING OLDER THAN THE VICTIM. THE INCIDENT OCCURRED BETWEEN NOVEMBER 2000 AND JULY 2001 AT [REDACTED] LOCATED IN CHEROKEE COUNTY, SOUTH CAROLINA.

CASE #2002-004263

WARRANT BASED ON THE INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE

Sworn to and subscribed before me

on 12/23/2002

Signature of Issuing Judge

Signature of Affiant

Affiant's Address 312 EAST FREDRICK STREET

GAFFNEY, SC 29340

Affiant's Telephone 864 487-2583

STATE OF SOUTH CAROLINA

County/ Municipality of CHEROKEE COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on November 25, 2000 defendant JASON MCSWAIN did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of CHEROKEE COUNTY) as set forth below:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 802

Judge's Address Cherokee County Court House

GAFFNEY, SC 29340

Judge's Telephone 803 487-2533

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

H-002569

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

CLERK OF COURT STATE W. BAINBRIDGE 45 DEC 30 P

SUPP. R. 21

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.
Gason Bryan McAvain
AKA:
Race: W Sex: M Age: 77
DOB: SS#:
Address:
City, State, Zip
DL#

INDICTMENT/CASE#: 03 -GS- 11 - 062
A/W#: H002569
Date of Offense: 11-25-00
S.C. Code §: 16-3-655
CDR Code #: 0131917
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: CSC w/a minor 2nd degree
in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131917
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
ATTEST:
[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 2 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 2 yrs may be served home monitor
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS
Recipient:
*Fine:
§14-1-206 (Assessments 107.5%)
§14-1-211(A)(1) (Conv. Surcharge) \$100
§14-1-211(A)(2) (DUI Surcharge) \$100
§56-5-2995 (DUI Assessment) \$12
§ 35.13 (Public Def/Prob) \$500
§73.3, 1B TP (Law Enforce. Funding) \$25
§33.7, 1B TP (Drug Court Surcharge) \$100
§50-21-114(BUI Breath Test Fee) \$50
§56-5-2942(J) (Vehicle Assessment) \$40/ea
3% to County (if paid in installments)
TOTAL \$ _____

SPECIAL CONDITIONS:
PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: SAUV car-063

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.
PRESIDING JUDGE [Signature]
Judge Code: 1312
Sentence Date: January 12, 2004

[Signature] Clerk of Court/Deputy Clerk
Court Reporter: [Signature]

White - Clerk Green - Corrections Canary - Probation Pink - Defendant SCCA/217 (7/2003)

WITNESSES

Christy Poole, GPD

DOCKET NO. 03-GS-11-064

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

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

Defendant

COURT OF GENERAL SESSIONS

MAR 13 2003

TERM

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

ARREST WARRANT NUMBER

I-063508

THE STATE

vs.

Defendant

Witness:

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

ACTION OF GRAND JURY

Jason Bryan McSwain

Foreperson of Grand Jury
Date: 2-13-03

VERDICT

Indictment for

**CONTRIBUTING TO
DELINQUENCY OF A MINOR**

SC Code: 16-17-490

TRUE BILL

Foreperson of Petit Jury
Date:

SUPP. R. 23



ARREST WARRANT

1-063508

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

THE STATE against

JASON BRYAN MCSWAIN

Address: [Redacted]

Phone: [Redacted] SSN: [Redacted]

Sex: M Race: W Height: 510 Weight: 190

DL State: SC DL #: [Redacted]

DOB: [Redacted] Agency ORI#: [Redacted]

Prosecuting Agency: Gaffney Police Department

Prosecuting Officer: C.I. Poole

Offense: Minor/Contributing to delinquency of min

or [Redacted] Offense Code: 0048

Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of GAFFNEY

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date: [Redacted]

RETURN

A copy of this arrest warrant was delivered to

defendant Jason Bryan Mcswain

on 02-27-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County/ Municipality of GAFFNEY

AFFIDAVIT

Form approved by SC Attorney General July 26, 1999. SCCA 518

Personally appeared before me the affiant C.I. Poole being duly sworn deposes and says that defendant JASON BRYAN MCSWAIN did within this county and state on 11/02/2002

violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of GAFFNEY) in the following particulars:

DESCRIPTION OF OFFENSE:

Minor/Contributing to delinquency of minor

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT BETWEEN THE DATES OF NOVEMBER 2, 2002 AND DECEMBER 8, 2002, THE DEFENDANT JASON BRYAN MCSWAIN, DID KNOWINGLY AND WILFULLY ENCOURAGE AND AID THE VICTIM, Victim 3 TO INJURY AND ENDANGER HER MORALS BY HAVING A SEXUAL RELATIONSHIP WITH HER, AND THE VICTIM BEING A MINOR. THIS INCIDENT OCCURRED AT THE DEFENDANT'S RESIDENCE LOCATED AT [Redacted] WITHIN THE CITY OF GAFFNEY, COUNTY OF CHEROKEE SOUTH CAROLINA. PROBABLE CAUSE BASED UPON THE INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT DETECTIVE DIVISION AND STATEMENT OF VICTIM. CASE NUMBER - 02-043357

Sworn to and subscribed before me on 12/27/2002 Signature of Issuing Judge (L.S.)

Signature of Affiant Affiant's Address: 201 N. Limestone Street Affiant's Telephone: 864-489-8115

STATE OF SOUTH CAROLINA County/ Municipality of GAFFNEY

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 11/02/2002 defendant JASON BRYAN MCSWAIN did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of GAFFNEY) as set forth below:

DESCRIPTION OF OFFENSE:

Minor/Contributing to delinquency of minor

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or

as hereafter is practicable. Signature of Issuing Judge (L.S.) Judge Code: 456

Judge's Address: 201 N. Limestone Street Judge's Telephone: 864-487-8524

Issuing Court: Magistrate Municipal Circuit

Original

FILED IN OFFICE OF CLERK OF CHEROKEE COUNTY 2003 JAN 17 AM 9:00 BRANDY W. HENNING

SUPP. R. 24

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.
Jason Bryan McSwain
AKA:
Race: W Sex: M Age: 27
DOB: SS#:
Address:
City, State, Zip
DL# SID#

INDICTMENT/CASE#: 03 -GS- 11 064
AW#: 1063508
Date of Offense: 11-02-02
S.C. Code §: 16-17-490
CDR Code #: 0101418
 CASE RESTORED
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Contributing Del. of a Minor
In violation of § 16-17-490 of the S.C. Code of Laws, bearing CDR Code # 0101418
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Solicitor: [Signature]
Defendant: Jason McSwain
Attorney for Defendant: [Signature]

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 30 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 1
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: other sentence
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: 30002-063

Recipient: _____
*Fine:
\$14-1-206 (Assessments 107.5%) \$
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
§ 35.13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$
\$50-21-114(BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ \$
TOTAL \$ \$

Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation

Clerk of Court Deputy Clerk: Brandy H. McBeal
Court Reporter: Mike Watts

PRESIDING JUDGE: [Signature]
Judge Code: 11312
Sentence Date: January 12, 2004

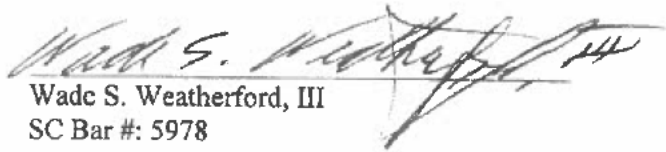
EXHIBIT F

7. That my mother and I have made our feelings known to the court in letters.
8. That I have also discussed this matter with my professional counselor and he believes it would be in my best interest for the restriction to be removed. (See attached letter)
9. That Petitioner is informed and believes that Jason McSwain does not object to the request of the Petitioner.

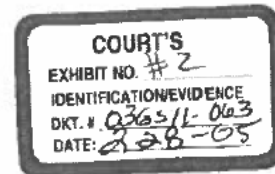
Wherefore, Petitioner prays that the restriction of "no contact with victim" be removed from the sentence of Jason McSwain in my case.

Feb 9
~~January~~ 9, 2005

Gaffney, South Carolina


Wade S. Weatherford, III
SC Bar #: 5978
P.O. Box 2207
Gaffney, SC 29342
864-489-1500
Attorney for Petitioner

December 26, 2004



Your Honor:

I became involved with Jason McSwain as a young girl in 2002. Jason was an assistant basketball coach and I was the team's statistician, so we spent a lot of time getting to know each other on the way to away basketball games. I was immediately drawn to Jason's funny and outgoing personality, his care and concern for others, and his genuine interest in learning more about me, my family, and my life. I honestly considered him a close friend and shared things with him that normal teenage girls struggle with, such as "boy problems" and "gossiping girls." I was disappointed when basketball season ended because I knew that I would probably never talk to him as much again. I started stopping by Jason's classroom between classes and after school to say hello and "chat." There were never any sexual advances of any kind, but I enjoyed being in his company so much. I remember daydreaming of what it would be like if I were his age and could be a part of his everyday life. I looked up Jason's phone number in the phone book and I called him one day at home. I got his cell phone number off of the caller id at my house from when he called my brother concerning the basketball team. I began calling Jason and it was obvious of my feelings for him. I made the initial pass at Jason when I asked to come to his house and when I asked if we could kiss at a basketball game that we both attended separately at the Bi-Lo Center in Greenville in March 2002. The relationship started there and continued until December 2002.

I found myself falling completely in love with Jason throughout the time we spent together. After a long while I asked him to have sex with me and he said "no" on several occasions. He told me that I was not ready for that and that I did not have to have sex with him in order for him to like me. Finally, after much persistence and begging, he gave in to my temptation. We talked about my high school graduation and how we could not wait until we could finally be together and start our happy life. In December, when my parents learned of our relationship, I was devastated. I swore to Jason that I would never let anything happen to him, but I could not stop the facts from being revealed. It was obvious that we had been communicating because the proof was right there on paper from my cell phone bills. I learned of his relationship with Victim 3 and Victim 2 after the police questioned them and after hearing their stories.

I was initially very angry with Jason because I did not believe that he would do something like this to me. I had the mind set that I did not care what happened to him because of the hurt he had caused me. I also allowed other people talk me into believing what they thought of the whole situation rather than listening to my heart. I really did not want anything to happen to Jason McSwain. We both made a mistake and he should not have to pay for the consequences any more than me. It was bad enough to be taken away from each other.

I have spent these last couple of years believing that the best thing for me would be to move on from the whole situation and find someone else to make me as happy as Jason

did. While in high school, I tried to fill my life with friends and social gatherings, but at the end of the day I always felt something missing. Deep down I longed for Jason, though I would never admit it to anyone because I was scared of what they would think about me. I always said to myself, "Jason and I will end up together in the end, even if I have to wait for seven years." I quickly realized that seven years is a very long time. I went to college in August and began thinking about Jason more and more. I no longer desired to go out and I found myself sitting in my dorm all the time and wishing to be at home again. My roommate had a serious boyfriend and I would find myself wishing that I could have a relationship with Jason like she and her boyfriend shared. I kept thinking that somewhere, no matter what anyone said, Jason still loved me and still longed to be with me just as much as I wanted to be with him. I finally opened up to my mom and asked her if she would help me.

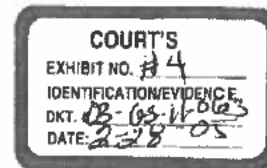
I am asking that you please grant the permission for me to communicate with Jason McSwain. I do not know how he feels about me, but I know that I cannot move on with my life until I find out. Deep down I have a feeling that he still feels the same way and that maybe we can finally have a life together. I have put very much thought into this request and I can assure you that my decision comes from much prayer and consideration, like my mother's. I am 18 years old now and I feel that I have grown and matured into a pretty intelligent individual. Also, it is my understanding that this stipulation was put in place for my protection. I do not feel, nor have I ever felt, that I should be protected from Jason McSwain. He has never threatened me or pushed anything on me at any time. As I stated earlier, I initiated most, if not all, of the actions between us. I feel that it is my right to be able to communicate with Jason and that I should be able to choose who I spend my time with. Now that I am considered an adult I do not see why I cannot make my own thoughtful and wise decisions. I ask that you allow me to communicate with Jason McSwain so that maybe I will finally be able to move on with this life that I have dreamed of for so long.

Sincerely,

Victim 1

Victim 1

December 27, 2004



Your Honor:

On December 10, 2002, I learned something about my beautiful daughter ^{Victim 1} that I didn't want to believe. The truth was devastating for a parent to hear. Not only was ^{Victim 1} sexually active, but with Jason McSwain, a teacher in her school. I kept saying to myself that my beautiful, smart, and vivacious daughter who seemed to "have it all together" would never do something so stupid. But the truth was staring us in the face. We couldn't just ignore the facts and allow this situation to continue. We reported what was happening to the school principal and Jason McSwain was arrested on December 13, 2002.

^{Victim 1}

At this time ^{Victim 1} was so depressed because she didn't want Jason to suffer and lose his job because of a choice that she made. When ^{Victim 1} continued to fight and defend Jason no matter what ugly truths we gave her, I knew that she loved him or at least thought she loved him. This was a crushing blow to me, but I could not accept the fact that she'd do something like this unless she loved Jason.

^{Victim 1}

We sent ^{Victim 1} to a Christian counselor and she seemed to be getting better and accepting the truth as we saw it. Within a few months of counseling ^{Victim 1} decided that she didn't need counseling. She tried to put on a happy face and make people believe that she was going to rise above all the ugly talk and gossip about her. She was determined to show everyone what a strong person she was. Little did I know...what ^{Victim 1} was showing on the outside was not at all what ^{Victim 1} was feeling on the inside. She tried "hanging out" with friends, but they seemed to disappear. She was slowly "cast aside" by many of her peers. She seemed to be searching for something that just wasn't there for her.

^{Victim 1}

^{Victim 1} was scheduled to leave for college in August 2004, and I just knew that she was going to be able to leave this entire "ugly story" behind her and spread her wings and fly. ^{Victim 1} didn't fly at all...she crashed and burned. By the end of September 2004, I realized that ^{Victim 1} was very unhappy. I started questioning her because she seemed depressed much similar to how she was when we discovered her involvement with Jason McSwain. ^{Victim 1} told me that she still loved Jason and she wanted to know "what if" he really loved her. My initial response was that she must be crazy and of course my heart was crushed. I tried to re-tell all the facts that were discovered in December 2002, but she wouldn't listen. Her dad and I talked with her and told her that she had to "get over this" and move forward.

I began "crying out" to God and praying for help with this situation. I searched the Bible looking for answers and seemed to always find scripture about forgiveness. I cried and I prayed for weeks, all the while talking to ^{Victim 1} daily on the phone...sometimes several times a day. Her depression was getting deeper and my concerns for her now turned to her mental health and trying to help her get through to the next day. I continued to ask

God for his guidance and I believe that's why I'm writing to you now. I have forgiven Jason McSwain, because I know that this is what God wants me to do. I want the opportunity to tell Jason that I forgive him. Only through much prayer and consideration am I making this request.

I beg of you to allow ^{Victim}1 to communicate with Jason McSwain. She is 18 years old now. Her father and I have made many choices and decisions for her, but she now has to make her own choices. I beg of you to allow ^{Victim}1 this. This is not a choice that I would have "wished for" for ^{Victim}1 but it is reality. ^{Victim}1 is not the "happy-go-lucky", self-assured young woman that she used to be. She's searching and asking herself "what if Jason really loves me."

As crazy as this request sounds to many people, and as unacceptable as this may be to "society," I still beg of you to allow communication between ^{Victim}1 and Jason. As ^{Victim}1's mother, I'm not concerned with "society" or what appears to be "right" in the eyes of the community. My concern is for my daughter and seeing her go forward with her life because she's not doing that right now. Please allow her to make her own choices. I don't have the answers, but I am asking for your help to allow ^{Victim}1 to find the answers for herself.

Respectfully requesting,

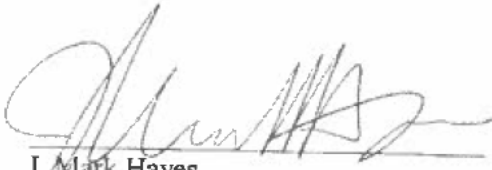


Dell Leazer

EXHIBIT G

ORDERED that Petitioner is hereby allowed to have contact with Defendant, so long as it is with the consent of Petitioner.

February 24, 2005
Spartanburg, South Carolina



J. Mark Hayes
Administrative Judge for Civil

EXHIBIT H

SUPP. R. 37



Donna S. Maddox, MD, LLC
Consulting Forensic Psychiatrist

Psychiatric Evaluation

Jason McSwain

DOB: [REDACTED]

Date of Virtual Evaluation: 7/5/22

Date of Report: 7/5/22

Identifying Information: Jason McSwain is a 45-year-old divorced father evaluated pursuant to a request from his attorney, Elizabeth Franklin.

Reason For Referral: He pleaded guilty to Criminal sexual conduct, second degree, Criminal sexual conduct third degree and Contributing to the Delinquency of a Minor for offenses which occurred in 2000 while he was a high school Chemistry teacher and basketball coach. He has been on the Sex Offender Registry since his conviction. His lawyer requested an evaluation to determine his current risk for offending if he is no longer on the registry.

Statement of Nonconfidentiality: He understood a written report of this evaluation would be sent to his attorney and potentially used in his upcoming legal proceeding.

Sources of Information:

Indictment CSC, second

Warrant CSC, second 3/1/2000-10/1/2000 (oral, digital)

Guilty Plea CSC, second sentence 10 yrs sus 2yrs home incarceration with 5 years probation 1/12/04

Exparte Order allowing victim **Victim 1** contact with Mr. McSwain 1/24/05

Petition to remove no contact order 2/9/05

Letter dated 12/26/04 ; **Victim 1**

Letter 12/27/04 from mother, Dell Leazer

Letter from Scott Davis 1/5/05

Warrant CSC, second 11/2000-7/2001

Guilty plea (same as above)

Warrant Contributing to the Delinquency of a Minor 11/02-12/02

Guilty plea 1 yr, time served and 1 year probation 1/12/04

Cherokee County Home Detention Successful Completion Report 1/17/06

Letters of support 2004

Pertinent History:

He presently resides in his own home where he has joint custody of his 13-year-old son. His parents divorced when he was younger. His mother remarried. His stepfather has Alzheimer's, and his 63-year-old mother is now a caretaker for him. He and his father now have a relationship since his charges. Before his charges, he viewed his father as "more like a friend." He graduated from Wofford College. He started teaching at age 21 at a Middle School. After one year, he was transferred to Gaffney High School. He had relations with three different students at different times. He was in his mid-twenties. Two of the victims were 16 and one was 15. He eventually married one of the alleged victims from 2006-2009. They share joint custody of their 13-year-old son [REDACTED]. He stated they divorced due to her infidelity. He denied that he was unfaithful to his wife.

He has been employed with the same company for six years. He is the Director for Environmental Health and Safety for a polymer company. They are aware he is on the Registry. He noted difficulty travelling because of his registry requirements. His passport was revoked although he had successfully traveled to Sweden and the UK. He was informed he would have to reapply and have his passport identify him as a sex offender.

He does not use drugs or alcohol.

He has no other legal history.

He does have some medical issues. He had C-Spine surgery and was prescribed Lyrica and Voltaren. He was treated for anxiety in the past with Klonopin. He has not been on this medication for some time. He presently takes Celexa 10 mg daily. He does have shoulder surgery scheduled.

He does report recent situational depression. He stated his son is now being picked on at school due to his status as a registered sex offender. He stated that some of his son's friends are not allowed to visit his home due to his status. He reported he hurts for his son and is saddened that his son has to deal with his offense history.

He recently had a three-year relationship which ended in May. He is not in a present relationship. He does not report any of the criteria for the nine paraphilic disorders. He has not had sex with prostitutes or strangers. He has not had multiple partners. He has used a dating app in the past.

Mental Status Examination:

He was pleasant and cooperative. He became tearful when discussing his son's situation because of his offending. He was not suicidal or homicidal. He prides himself on being a good father. His judgment is good as well as his insight. His cognition was intact.

Diagnosis:

Adjustment Disorder with depressed mood

Risk Assessment:

The Static 99-R is an empirically derived actuarial risk assessment designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or nonconsenting adult. It is intended to position offenders in terms of their relative degree of risk for sexual recidivism based on commonly available demographic and criminal history information that has been found to correlate with sexual

recidivism in adult male offenders. The scores characterize the individual's relative risk for sexual recidivism in terms of how unusual it is and how it compares to risk presented by the typical offender. The recidivism estimates were derived from new charges and reconvictions of groups of individuals. As such, these estimates do not directly correspond to the recidivism risk of an individual offender.

In routine sample of sexual offenders, the average five-year recidivism rate is between 5% and 15%. This means that out of 100 sexual offenders of mixed risk levels, between five and fifteen would be charged or convicted of a new sexual offense after five years in the community. Conversely, between 85 and 95 would not be charged or convicted of a new offense during that period.

Mr. McSwain's score of 0 on the Static 99-R places him in the Low risk range. Offenders with this same score from the routine samples have been found to sexually recidivate at 1.8% to 4.4% after five years. The observed recidivism rate is 2.8%. The expected recidivism rate is halved if the offender has been offense free from five to ten years while in the community, placing his expected recidivism at 1.4%.

Opinions:

1. Mr. McSwain's risk to reoffend is below average.
2. His expected recidivism rate is 1.4% based on his being in the community for more than ten years without an offense.



Donna S. Maddox, MD
Consulting Forensic Psychiatrist

EXHIBIT I



**South Carolina
Law Enforcement Division**

P.O. Box 21398
Columbia, South Carolina
29221-1398

Henry D. McMaster, Governor
Mark A. Keel, Chief

Tel: (803) 737-9000

October 17, 2022

Jason Bryan McSwain
[REDACTED]
[REDACTED]

Ref: Sex Offender Registry Removal
Application# 2022-00134

Jason Bryan McSwain,

After carefully reviewing your Application for Removal from the S.C. Sex Offender Registry (SOR), the SLED SOR unit has noted that you do not meet the requirements for removal outlined in S.C. Code 23-3-462. Specifically, S.C. Code 23-3-462(A) states, "[a]n offender may file a request for termination of the requirement of registration with SLED, in a form and process established by the agency... after having been registered for at least twenty-five years, if the offender was convicted as an adult, and was required to register as a Tier II offender."

Your January 12, 2004, conviction for Criminal Sexual Conduct in the 2nd Degree is classified as a Tier II offense for the removal process. Additionally, your initial registration date is recorded as January 23, 2004. Therefore, you have only completed 18 years, 7 months, and 23 days of the required 25-year registration period. Barring any future convictions for a sex-related offense or for failing to register as a sex offender, you will be eligible to apply for removal no earlier than 120 days prior to January 23, 2029.

Lastly, S.C. Code 23-3-462(D)(1) provides, "[i]f an offender is denied a termination request, the offender may petition again for termination with SLED no sooner than five years after the previous denial." Again, you will be eligible to apply for removal no earlier than 120 days prior to January 23, 2029.

Respectfully,

A handwritten signature in black ink that reads "Bryan C. Ridgeway".

Bryan C. Ridgeway, Lieutenant
SLED, S.C. Sex Offender Registry

cc: Jason Bryan McSwain SOR file
Cherokee County Sheriff's Office
Franklin Best Law Firm



An Accredited Law Enforcement Agency



SUPP. R. 42