

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 16 2025

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Grace Gilchrist Knie, Circuit Court Judge

TERRY L. McCARRELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000415

APPENDIX

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present and testified. The PCR was dismissed on April 20, 2017. App'x. pp. 2-12. This petition for writ of certiorari follows.

STATEMENT OF THE FACTS

The charges arose from accusations of theft in November 2011 at the home of Jesse and Tamila Woodard, the neighbors of victim (“Minor”) at the time. At that time, the Woodards were trying to start fresh after drug addiction led to the removal of their children. App’x. p. 123, lines 4-21; p. 124, lines 6-17; p. 142, lines 1-6; p. 156, lines 4-18; p. 158, lines 1-4. Jesse had invited Minor and Petitioner into his home to look at photographs of tattoos and touch up Minor’s tattoo. App’x. p. 143, lines 5-12; 144, lines 17-19; p. 145, lines 5-11. At the time, his wife Tamila was getting ready for work, and she had removed a few of her rings and placed them on a table. App’x. p. 162, lines 1-5. While Petitioner and Minor were in the home, Jesse testified he heard “something hit the floor...like a tink”, but he testified that he did not “really think anything about it.” App’x. p. 146, lines 1-15; p. 147, lines 4-10. At trial, Minor testified that she saw Petitioner take the rings and that she “didn’t care” that he was taking them, yet also testified that “I think [Applicant] just picked it up and put it back on the table.” App’x. p. 231, lines 20-22; p. 232, lines 1-10. The Woodards later called law enforcement to report that the rings had been stolen. App’x. p. 92, line 4. That same day, law enforcement searched Petitioner’s person and did not find the rings; but he was nevertheless arrested based upon Jesse’s statement to law enforcement. App’x. p. 150, lines 4-25. In his statement, Jesse had told police the rings were roughly “like \$2,500, the value of those rings. We could have got rid of them for right at \$2,500.” App’x. p. 151, line 25; p.152, lines 1-9.

Petitioner’s daughter, Brooklin Pollard, later returned one of the rings to law enforcement. App’x. p. 174, lines 10-12. Pollard also offered officers text messages from her cellphone that contain a conversation between she and Minor about the rings. App’x. p. 175, lines 117-125. In those text messages, Pollard alludes to Minor as the person that stole the rings

and Minor admits that she flushed them down a toilet. App'x. p. 180, lines 23-25; p. 181. Additionally, in one of the text messages, Minor stated that she “would take the fall because I think I’m pregnant...by [Petitioner.]” App'x. p. 124, lines 4-13. With Minor being thirteen years old at the time, Investigator Maschak was alarmed by that last text message and contacted Investigator Robert Perry to look into it. App'x. p. 182, lines 14-22.²

Investigator Maschak and Investigator Perry later spoke with Minor about the rings and the possible relationship with Petitioner at her home with her mother present. App'x. p. 183, lines 6-21. During that conversation, Minor admitted she had had possession of the rings, but stated Petitioner had stolen them. App'x p. 184, lines 20-25; p. 185, lines 1-2. Minor was charged with receiving stolen goods after giving her statement to the investigators. App'x. p. 185, lines 11-12. She consequently spent three months detained at the South Carolina Department of Juvenile Justice. App'x. p. 238, lines 15-16.

Also during the conversation at Minor's home, Investigator Maschak described Minor as uncooperative in disclosing the sexual relationship, but stated she did eventually give a statement to Investigator Perry that she and Petitioner had been having sex for several months prior to his arrest for grand larceny. Investigator Perry testified at trial that the statement Minor gave about the relationship was not detailed at all, but her statement as to the ring theft was detailed. App'x. p. 287, lines 18-24. Petitioner, still in jail for grand larceny at the time Minor disclosed the

² At trial, Minor identified the text-messages she received from and sent to Pollard's phone by her signature on the texts sent as “Zoe's mommy.” App'x. p. 228, lines 1-21. Minor also read for the court multiple text messages she said were between she and Petitioner, whom she stated sometimes used Pollard's cellphone. App'x. p. 228, lines 20-25; p. 229, 1-14.

alleged relationship, was thereafter charged with CSC with a minor. App'x. p. 186, lines 12-16; p. 286, lines 19-22. The charges relating to the stolen rings and CSC were tried all at once.

Trial counsel did not sever the charges.

Then sixteen years old, Minor testified at trial. App'x. p. 198, lines 5-6. Minor testified that she and Petitioner lived down the street from one another and had met through a mutual acquaintance. App'x. p. 208, lines 22-25, p. 209-210. Minor could not specifically remember how long had passed between meeting Petitioner and the next time she saw or had any contact with him, but stated it was "probably a few days." App'x. p. 210, lines 1-7, 23-25. Minor did not even know in what month she met Petitioner or when the relationship began. App'x. p. 211, lines 6-7. Minor testified that she did not tell anyone about the advances she testified Petitioner made or their sexual activities, including her mother although they had a good mother-daughter relationship at the time. App'x. p. 216, lines 19-25. Minor testified that trial was the first time she had not lied at all about the sexual relationship with Petitioner. App'x. p. 240, lines 7-9.

No physical evidence of the relationship was ever found or introduced into evidence at trial. Any interview Minor had at the Judy Valentine Center was also not introduced into evidence or testified to at trial, and there is no indication she received counseling otherwise following the disclosure of alleged sexual abuse.

Minor also testified that she often physically fought other students at her school, beginning when she was eleven years old. App'x. p. 201, lines 13-25. Prior to the offenses at issue at trial, Minor had been using drugs and had been arrested for assault and battery, disturbing schools, and running away. App'x. p. 203, lines 1-7; p. 204, lines 14-15. During the period where she had run away, Minor found out she was pregnant by a teenager she knew at the time. App'x. p. 203, lines 10-11. Minor said that she was just very angry at anything and

everything in middle school, and testified, “I was just rebelling. I mean, I knew what I was doing.” App’x. p. 202, lines 1-4, 21-22. Trial counsel did not cross-examine Minor at all at trial. App’x. p. 243, lines 10-13.

At the PCR hearing, trial counsel recalls meeting with Petitioner at least once before trial. App’x. p. 377, lines 24-25. Trial counsel also testified that Petitioner had been represented by another attorney up until the mid to end of June of 2014, leaving just a week or two for trial counsel to prepare for trial. App’x. p. 378, lines 8-25; p. 379. Nonetheless, trial counsel was adamant he felt no need to ask for a continuance and that he had had enough time to adequately prepare for trial. App’x. p. 380, lines 1-9; p. 383, lines 12-16. Trial counsel also testified he did not remember getting any cellphone records in discovery, although he did testify that he recalled that the State had introduced text messages attributed to Petitioner found on Pollard’s phone at trial. App’x. p. 404, lines 13-25; p. 382, lines 22-25; p. 383, lines 5-11. However, trial counsel subsequently testified that he did not remember whether the text messages between Petitioner and Minor were admitted at trial, but testified that the text messages that alluded to the alleged sexual relationship would have tied Petitioner to the alleged victim. App’x. p. 408, lines 1-9. Trial counsel also testified that he was not aware that Petitioner was in jail for grand larceny at the time one or more of the incriminating text messages was allegedly sent between Petitioner and Minor. App’x. p. 405, lines 4-11, 25; p. 406, lines 1-22; p. 407, lines 1-9, 12-25; p. 408, lines 3-25. The PCR court denied relief on the issue of trial counsel’s failure to challenge the text messages or use them as an alibi, finding that it had not been raised in the original application. App’x. p. 10.

Trial counsel also testified that the grand larceny charge and the charges relating to the alleged sexual misconduct with Minor would “absolutely” have been severable. App’x. p. 382,

12-14. Trial counsel did not move to sever the charges at trial because “it was part of my defense...that the only reason that the victim made up these allegations was to try to save herself or give herself some excuse to get out of the grand larceny charges.” App’x. p. 381, lines 8-25. Trial counsel admitted that this essentially tied Petitioner to a crime that he persisted he was not involved in and had pled not guilty to; but trial counsel testified that he proceeded on this idea regardless because the grand larceny charge “was less significant than what he was accused of, which was a lewd act.” App’x. p. 382, lines 6-11. Yet trial counsel testified he could not remember exactly what his trial strategy was. App’x. p. 387, lines 24-25. Trial counsel instead offered that “[c]hallenging the credibility of the victim certainly was one.” App’x. p. 387, line 25; p. 388, line 1. Trial counsel also testified he was aware that Minor already had a significant juvenile criminal record at the time of trial, App’x. p. 380, lines 18-25. Trial counsel testified,

I think she had lied about the stolen jewelry items. And she had a reason to try to throw [Petitioner] under the bus....She had lied in the past. I think I had got some of that out on cross-examination. I didn’t ask her about the juvenile record but I did ask her about some prior credibility issues. So, I had enough, I thought, that would establish reasonable doubt with a couple jurors.

App’x. p. 388, lines 3-11. Yet trial counsel had not cross-examined Minor at all. App’x. p. 243, lines 10-13. In dismissing Petitioner’s PCR on this issue, the PCR court found that this was a viable strategy as trial counsel could not have attacked the credibility of the victim had the cases been tried separately. App’x. p. 8-9.

STANDARD OF REVIEW

Upon review, the Court will defer to the PCR court's findings of fact unless there is no evidence of probative value in the record to support the findings of the PCR court. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). The Court will also defer to the PCR court's findings on matters of credibility. *Simuel v. State*, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010). In contrast, questions of law are reviewed de novo. *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

ARGUMENT

A criminal defendant has the right to effective assistance of counsel under the Sixth Amendment of the United States Constitution. U.S. Const. amend. VI. Relief is warranted for violation of this right when counsel's performance was deficient and the defendant was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1985). Counsel is deficient when his performance falls below an objective standard of reasonableness according to prevailing professional norms. *Id.* at 688, 104 S.Ct. at 2065; *see also Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) ("Regarding the deficiency prong, the proper measure of counsel's performance is whether he has provided representation within the range of competence required by attorneys in criminal cases.") (quoting *McHam v. State*, 404 S.C. 465, 474, 746 S.E.2d 41, 46 (2013)). The prejudice prong is satisfied when there is a reasonable probability that but for counsel's errors, the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068; *see also Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.") (citing *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068). However, "[w]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). The validity of counsel's strategy is viewed under an "objective standard of reasonableness." *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (finding that trial counsel's belief that available witnesses "would not add much to the case" was not an objectively reasonable strategic reason for the failure to call them to testify when the available witnesses would have supported the defense's trial theory).

The PCR Court erred in denying relief. For the reasons discussed herein, this Court should grant the Petition for Writ of Certiorari and reverse the PCR Court's order denying relief.

I. THE PCR COURT ERRED IN FINDING THAT TRIAL COUNSEL'S PERFORMANCE WAS NOT DEFICIENT OR PREJUDICIAL IN THE FAILURE TO SEVER THE CHARGES.

The PCR Court erred in denying relief on this ground and incorrectly applied the *Strickland* standard in finding that trial counsel was not ineffective and had articulated a valid strategic reason for failing to move to sever the charges. Thus, the PCR Court's findings and conclusions discussed herein are to be reviewed de novo. *Lomax v. State*, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008).

Motions for severance are within the trial judge's discretion. *E.g.*, *State v. Nichols*, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997). Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has discretion to order the indictments tried together if the defendant's substantive rights would not be prejudiced. *State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996); *State v. Williams*, 263 S.C. 290, 210 S.E.2d 298 (1974); *State v. Jones*, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996). Offenses are properly considered to be of the same general nature where they are interconnected. *Jones*, 325 S.C. at 315, 479 S.E.2d at 519. In contrast, offenses that may be of the same nature, but do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together. *See e.g.*, *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986) (holding that although inmate escapee committed two murders within a few miles of one another, as well as an attempted armed robbery, the trial judge erred in consolidating the charges at trial because the crimes did not arise out of a single

chain of circumstances and they required different evidence); *State v. Tate*, 286 S.C. 462, 334 S.E.2d 289 (Ct. App. 1985) (finding that the joint trial on identical but unrelated forgeries violated the defendant's right to a fair trial). *Cf. State v. Woomer*, 276 S.C. 258, 277 S.E.2d 696 (1981) (holding it was proper to try together all crimes arising from a single uninterrupted crime spree). Further, “[w]hile severing trials certainly impacts judicial economy and State resources, these factors should not take precedence over the protection of a defendant's constitutional rights.” *State v. Henson*, 407 S.C. 154, 167, 754 S.E.2d 508, 515 (2014).

Here, trial counsel’s failure to move for a severance constitutes deficient performance. As trial counsel admitted, the charges would have clearly been severable. App’x. p. 382, lines 12-14. The nature of the charges and the elements that the State needed to prove beyond a reasonable doubt for grand larceny and the CSC charge and lewd act charge are clearly vastly different. App’x. pp. 474-75; 478-79; 482-83; 486-87. *Compare* S.C. Code Ann. § 16-3-655(B)(1), formerly § 16-3-655(2); §16-15-140; § 16-17-0490; *with* § 16-13-0030. Grand larceny shares no element or evidence in common with either charge. Further, the evidence produced at trial does not indicate that the CSC and lewd act charges occurred as part of the same transaction as the grand larceny charge or that the motive in committing one offense was in furtherance of any other charge. *Cf. State v. Rice*, 386 S.C. 610, 615-16, 629 S.E.2d 393, 395-96 (Ct. App. 2006) (holding that trial court did not err in refusing to sever trial for murder and a cocaine trafficking charge because the motive for murder arose from the cocaine activities and the evidence showed that the relationship between the defendant and the victim was largely based on selling drugs). Thus, counsel’s performance in not moving for a severance was deficient.

Trial counsel’s performance in failing to move a severance prejudiced Applicant at trial. Had the charges been severed, there is a reasonable probability the trial result would have been

different. From the testimony and evidence given to support the CSC and lewd act charges, it was the State's theory that Minor complied with the supposed request Petitioner made for her to flush the rings because of his older age and the dominant role he held the sexual relationship. In the context of the relationship between the two, the contributing to the delinquency of a minor charge and its connection to the grand larceny charge made Minor appear more than ever as a victim swept up in the unsavory influence of an older predatory male. Indeed, the State connected the charges together as supporting the evidence for each other charge during closing arguments. App'x. p. 275, lines 4-11; p. 277, lines 6-22. Yet, the State could have tried grand larceny alone or grand larceny with contributing to the delinquency of a minor charge without fragmentation of its case. *See Rice*, 368 S.C. at 616, 629 S.E.2d at 396. Indeed, two investigators, Investigator Perry and Investigator Maschak investigated the CSC and lewd act and grand larceny charges separately by questioning Minor about each conduct separately. However, both investigators were present for both of her statements on the charges and testified to her each of her statements. Specifically, Investigator Maschak's testimony was a mixture of testifying to her statement on the grand larceny charges and the taking of her statement on both the rings and the sexual relationship. This link in the testimony, seen throughout trial in the evidence presented for both charges, resulted in the evidence of grand larceny corroborating the existence of a relationship. Hence, the evidence that Petitioner stole the jewelry and made Minor get involved in covering up the crime improperly influenced the jury in a manner similar to general character evidence by raising the specter of criminal activity and crooked morals. *Tate*, 286 S.C. at 464, 334 S.E.2d at 290 (Ct. App.1985); *State v. Smith*, 322 S.C. 107, 109-110, 470 S.E.2d 364, 365 (1996).

The prejudice resulting from the improper influence of the failure to sever is underscored by the lack of evidence for the CSC and lewd act charges against Petitioner besides the testimony of Minor. There were no eyewitnesses to the actual sexual relationship Minor alleged. Although Minor's mother testified that she had seen Petitioner visit her home when she was not present and had warned him not to do so, Minor's mother did not witness any activity to actually prove that a sexual relationship existed. No forensic interview or report from a physical examination of Minor was presented to the jury and the reasons as to why an interview or examination was not done or shown to the jury cannot stand as evidence of something incriminating. Indeed, trial counsel testified at the PCR hearing that besides Minor's testimony, there was no evidence to prove the CSC or lewd act charges. App'x. p. 394, lines 20-23.

Additionally, the result of the grand larceny charge would have been different had the trial been severed. Coupled with the lack of evidence that Minor and Petitioner planned to steal jewelry when visiting the Woodards' home, the testimony regarding Minor's extensive juvenile criminal history at a severed trial would have created reasonable doubt that Minor, rather than Petitioner, stole the rings. After all, Petitioner was searched shortly after Mrs. Woodard discovered her rings were missing and they were not found on Petitioner. Minor also admitted she had had at least one ring in her possession at one point, unlike Petitioner who never made any such admission. The State also conceded at trial that Jessie did not see Petitioner take the rings, only that he heard "a tink" and saw Petitioner "move quickly." Without the evidence of the relationship, it is more likely than not that a jury deciding Petitioner's guilt on grand larceny and contributing to the delinquency of a minor would have found that Minor stole the rings or was not led to become involved with stealing the rings through improper influence by Petitioner, and instead did so on her own based upon her admissions in light of her juvenile criminal history.

A. THE PCR COURT ERRED IN CONCLUDING THAT TRIAL COUNSEL HAD ARTICULATED AN OBJECTIVELY REASONABLE STRATEGIC REASON FOR FAILING TO MOVE FOR A SEVERANCE.

The failure to sever the charges at trial is not a valid trial strategy that would absolve trial counsel from a finding of ineffective assistance. It is not objectively reasonable for trial counsel to allow a defendant to be “tied” to another crime for which he is being tried. *See* Trial counsel’s testimony at App’x. p. 382, lines 6-11. *See also Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008); *Ingle v. State*, 348 S.C. 467, 560 S.E.2d 401 (2002). By allowing this “tie”, trial counsel “fail[ed] to subject the prosecution’s case to meaningful adversarial testing” and thus made “the adversary process itself presumptively unreliable.” *United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039 (1984). This error actually bolstered the case against his client. *See generally, Nance v. Ozmint*, 367 S.C. 547, 553, 626 S.E.2d 878, 881 (2006), *cert. denied*, 549 U.S. 943, 127 S.Ct. 131, 166 L.Ed.2d 253 (2006).

Moreover, juxtaposing trial counsel’s testimony at the PCR hearing with what actually occurred at trial further demonstrates that this was not a valid trial strategy. Trial counsel testified that he did not sever the charges because he wanted to discredit her credibility of her testimony regarding the relationship by highlighting her involvement with stealing the rings, and testified that he had cross-examined her enough to achieve this end. Yet trial counsel did not cross-examine Minor at all, which is a fact that the PCR Court’s Order of Dismissal fails to account for when concluding that trial counsel employed a valid trial strategy. Further, in denying relief on this ground, the PCR Court concluded that “Trial Counsel had a very specific trial strategy in choosing not to sever these charges. He stated that he wanted to attack the credibility of the minor Victim, and he would not have been able to do that for an charge without trying all of them together.” App’x. p. 8-9. There is no support for this that can be gleamed from

the circumstances or in the record, all trial counsel testified to was that he was “sure they objected to me actually asking the juvenile about her record, specifically.” App’x. p. 401, lines, 2-5. Yet, trial counsel did not cross-examine Minor and Minor had volunteered her criminal history on direct examination. Thus, there is no reason given in the PCR Court’s order or is made otherwise clear from the record as to why he could not have damaged her credibility at a severed trial by using evidence of her involvement with the rings or her volunteered summary of her juvenile criminal history. Stated another way, there is no indication that trial counsel would not have been able to do at a severed trial what he did not do or chose not to do at Petitioner’s trial. Additionally, trial counsel’s error cannot be justified on an assertion that he would not have been permitted to cross-examine her on her juvenile criminal history to attack her credibility, at trial or had the charges been severed. *See* Rule 609 (c), SCRE (“Evidence of a juvenile adjudication is admissible under this rule if conviction of the crime would be admissible to attack the credibility of an adult.”); *see also* Rule 609 (a) (1)-(2), SCRE.

Therefore, trial counsel’s performance in the failure to move for a severance was deficient and prejudicial performance and the PCR court erred in denying relief on this ground.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari and reverse the PCR Court's Order denying relief.

Respectfully submitted,

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January 19, 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2017-001177

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S.C. SUPREME COURT

TERRY L. MCCARRELL,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUE PRESENTED

Whether probative evidence supports the PCR court's finding that Trial Counsel was not ineffective in his representation where he articulated a valid trial strategy in choosing not to move to sever the charges.

STATEMENT OF THE CASE

Petitioner is presently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Petitioner was indicted by the February 2013 term of the Greenville County Grand Jury for second-degree criminal sexual conduct (2012-GS-23-00967) ¹ and lewd act upon a child (2012-GS-23-00968). Petitioner was subsequently indicted by the June 2014 term of the Greenville County Grand Jury for contributing to the delinquency of a minor (2012-GS-23-01662) and grand larceny (2012-GS-23-02622). Alex Stalvey, Esquire, represented him on the charges. On July 7, 8, and 10, 2014, Petitioner proceeded to a jury trial at which he was found guilty as indicted on all charges. The Honorable Robin B. Stilwell sentenced Petitioner to confinement for twenty years for first-degree criminal sexual conduct, fifteen years for lewd act upon a child, three years for contributing to the delinquency of a minor, and five years for grand larceny. The sentences run concurrently.

A notice of appeal was filed on Petitioner's behalf and an appeal perfected pursuant to Anders v. California, 378 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal after review. State v. McCarrell, Op. No. 2016-UP-005 (filed on January 13, 2016). Remittitur was issued on January 29, 2016.

Petitioner filed a timely application for post-conviction relief on February 22, 2016, alleging that he is being held in custody unlawfully for the following reasons:

1. "All of the charges were tried together, the trial should have been severed to separate the Grand Larceny charges from the others. His attorney failed to sever the trial." (sic)
 - a. "Because the Defendant pled guilty to Grand Larceny, his guilt of that charge spilled over into the jury's perception and assessment of his

¹ Respondent's previous filings refer to this charge as criminal sexual conduct with a minor, first degree. This was a clerical error, and the indictments in the record show this charge was actually criminal sexual conduct with a minor, second degree.

- innocence of the charges he did not plead guilty to.”
2. “The victim of Grand Larceny was shown a photographic line up, and his identification was tainted by law enforcement’s use of unnecessarily suggestive identification procedure. Additionally, this line up was introduced at trial and was prejudicial to the Defendant. His attorney failed to prevent the admission of this evidence and testimony.”
 - a. “The line up included photographs that were clearly mugshots and the other mens’ appearance in regard to skin tone, age, weight and hair style (including facial hair), varied widely. Therefore, the Grand Larceny victim and witness only had to choose from two photographs to identify the Defendant, instead of six. The admission of this line up at trial was also prejudicial to the Defendant because the mugshots of the Grand Larceny charge spilled over into the jury’s perception and assessment of his innocence of the charges he did not please guilty to.”
 3. “His attorney failed to object at various instances of prejudice to the Defendant at trial.”
 - a. “Evidence and testimony were introduced that were unduly prejudicial to the Defendant.”

Respondent submitted its Return and Motion for More Definite Statement on August 16, 2016. An evidentiary hearing was convened on February 23, 2017, at the Greenville County Courthouse before the Honorable Brooks P. Goldsmith. Petitioner was present at the hearing and was represented by William G. Yarborough, III, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office. At the evidentiary hearing, Petitioner testified on his own behalf and presented testimony from Trial Counsel Alex Stalvey (“Trial Counsel”), and Brooklin Pollard. Judge Goldsmith denied and dismissed the application in an Order signed April 20, 2017, and filed May 10, 2017.

Petitioner filed a timely Notice of Appeal on May 15, 2017. Petitioner’s Petition for Writ of Certiorari and Appendix were filed on January 19, 2018. This Return to Petition for Writ of Certiorari follows.

STANDARD OF REVIEW

This Court gives great deference to the post-conviction relief court's findings of fact and will uphold them if there is evidence in the record to support them. Smalls v. State, 422 S.C. 174, 174, 810 S.E.2d 836, 839 (2018). Pure questions of law are reviewed de novo without deference to the lower court. Id. The proper standard of review of a post-conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

In a post-conviction relief proceeding, the petitioner bears the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, at 442, 334 S.E.2d at 814. The applicant must overcome this presumption to receive relief. Cherry, at 118, 386 S.E.2d at 625.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for

counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

ARGUMENT

Probative evidence supports the PCR court's finding that Trial Counsel was not ineffective in his representation where he articulated a valid trial strategy in choosing not to move to sever the charges.

Petitioner argues the PCR court incorrectly applied the Strickland standard and erred in finding Trial Counsel was not ineffective because he articulated a valid strategic reason for failing to move to sever the charges. However, this issue is meritless, as probative evidence supports the PCR court's ruling that Trial Counsel strategically chose not to move to sever the charges, and his strategy was valid under reasonable professional norms. Accordingly, this Court should affirm the PCR court's denial of post-conviction relief.

Petitioner was charged with criminal sexual conduct with a minor in the second degree, lewd act upon a child, grand larceny, and contributing to the delinquency of a minor. All four of these charges arose from allegations regarding the same thirteen-year-old female Minor, who lived down the street from Petitioner. App. 210. Petitioner was involved in a social relationship with Minor and had been seeing her during the day when her mother was at work. App. 211. Minor testified at trial that Petitioner came over to her house every day while her mother was away, and after about two weeks, their relationship became sexual in nature. App. 212. She testified that, although she did not want to and was not comfortable with it, he had sex with her on multiple occasions at her house. App. 217-227. Minor testified that Petitioner told her he was thirty years old and had young children. App. 224-225. In reality, Petitioner was forty-eight years old.

On November 14, 2011, Minor and Petitioner went next door to visit their neighbors. App. 229-230. Minor testified that while they were inside the house, she saw Petitioner take two rings that were sitting on a table. App. 231. The neighbors did not see the ring being taken, and

when they were finished visiting, she went back home and did not say anything about the rings. App. 231-232. Later that night, the neighbors called the police, and Petitioner told Minor to flush the rings down the toilet. App. 233. When the rings would not flush, Minor hid them in her bathroom. App. 233. Eventually, Petitioner was arrested for the theft of the rings, and Minor met with Petitioner's daughter to return the stolen ring. App. 234-235. During a text message conversation with Petitioner's daughter, Minor lied to her about being pregnant with Petitioner's child so she would not get in trouble for the rings. App. 235.

Trial Counsel did not cross-examine Minor at trial. App. 243. At the post-conviction relief evidentiary hearing, Trial Counsel testified that his trial strategy was to show that Minor actually stole the rings and then fabricated the allegations of their sexual relationship in order to save herself. Trial Counsel explained why he chose not to sever the charges:

Q: Why didn't you move to sever?

A: Well, my thinking was with the grand larceny, with that still being in the case, and the victim being involved in the grand larceny, it really—I mean, that was part of my defense was that the only reason that the victim made up these allegations was the try to save herself or give herself some excuse to get out of the grand larceny charge. You know, she was – her whole story, if I remember correctly was, that she was with Mr. McCarrell, Mr. McCarrell influenced her in some way to steal these items from the neighbor. And that's why she stole the items.

When they caught her, you know, they basically caught her red handed. And that's when the whole relationship with Mr. McCarrell came out. So, I basically figured, you know, the grand larceny was her way of – she was charged with grand larceny and in order to get out of it, she had to accuse Mr. McCarrell of these acts. So, she looked like the victim. It was not actually the Defendant in a grand larceny case.

Q: Right. But I mean, didn't that, at trial, didn't that tend to tie Mr. McCarrell to something that he said he wasn't involved in?

A: It did. But I thought that was – that was less significant than what he was accused of, which was a lewd act.

Q: Right. But they clearly would have been severable?

A: Sure. Absolutely.

App. 381, line 11 – 382, line 14. Trial Counsel testified that he could not recall speaking to Petitioner about his decision not to sever the charges. He continued:

A: I felt like I was well prepared [for this case]. I did not feel like I needed more time to do anything. I mean, the decision not to sever the cases was certainly a decision that I made. And I didn't – and I'll tell you right now, even if I would have talked to Mr. McCarrell, he would have said, No, I want you to sever them, I probably still would have gone forward with not severing them. Because that would have been a trial strategy that was my decision and not his.

App. 383, line 16-24.

Trial Counsel could not specifically recall at the evidentiary hearing if he had cross-examined Minor at trial, but he assumed the State would have objected to him asking the juvenile about her criminal record, and he guessed that he probably asked Minor some credibility questions about her background. App. 401. Although Trial Counsel had not actually asked Minor any questions on cross-examination, he agreed at the evidentiary hearing that Minor testified on direct examination about her personal background and criminal history and she admitted that she lied about being pregnant in order to avoid the blame for the stolen rings. App. 401.

Petitioner now contends that Trial Counsel could not possibly have employed the trial strategy he testified about at the evidentiary hearing because he did not actually cross-examine Minor at trial, and therefore he could not have attacked her credibility in a way that he could not have done if the charges had been severed. This argument is meritless, as the record shows support for Trial Counsel's testimony about his strategy.

At trial, Minor's mother, Jamey O'Neill, testified. Trial Counsel cross-examined O'Neill on her daughter's behavior and criminal record. App. 272- 279. He challenged her contention that Minor was a good mother to her newborn baby, which had been born with Minor was only thirteen years old, by pointing out that just two months after the child was born, Minor was stealing other people's property. App. 272. He had her admit that Minor had pled guilty to stealing property and served ninety days in juvenile jail. App. 272-273. He asked in detail about Minor's illegal tattoo, her disrespect and lies to the police during their investigation of the stolen rings, and her illegal possession and use of cigarettes. App. 273-276.

Trial Counsel cross-examined Investigator Robert Perry at trial about Minor's lie that she was pregnant and the fact that Minor provided false information to the police when they initially investigated the stolen rings. App. 296-297. He asked him about his awareness of Minor's several prior encounters with police prior to this incident and the fact that she was on juvenile probation at the time. App. 300.

In his closing argument to the jury, Trial Counsel pointed out that months after her baby was born, Minor was "talking about selling drugs, selling marijuana to a neighbor to get Terry McCarrell out of jail," and that Minor had a history of lying to the police. App. 342. He criticized the State's investigation of the case and called out inconsistencies in Minor's testimony that would contradict her accusation of a sexual relationship with Petitioner just months after her baby was born. He reminded the jury that Minor's neck tattoo was illegal because she was only thirteen years old. App. 346. He criticized Minor's testimony:

She said when she had her baby that her life changed. All right, well, let's see what she did after she had her baby. Her baby was born in [REDACTED]. In November, the rings were stolen. The rings were stolen when she went over there to get her neck tattooed by her own admission. Two months after her baby is born, two months after her baby is born, the police come and talk to her about it. She's changed her life, right? That's what she wants you to believe, she's changed

her life. What did she tell the police about these rings? She lies. She says she didn't have anything to do with it. A month later, three months after her baby is born and her life has changed, the police come back. They say, We want to talk to you some more about these rings. By her own admission, her own testimony, she said, I lied again and I kept lying until they showed me the text messages. Then I told the truth because I knew I was caught.

App. 348, line 14 – 349, line 5.

These examples from the trial transcript clearly support the trial strategy that Trial Counsel articulated at the evidentiary hearing. It is clear that his intention was to show the jury that Minor was not a credible witness, and she was lying in order to save herself. Trial Counsel's strategy of keeping all four charges together in order to use the stolen rings to show Minor's motive for lying about a sexual relationship with Petitioner was certainly a valid trial strategy, given the facts and circumstances of this case.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Because Trial Counsel articulated a valid trial strategy in choosing not to move to sever the charges at Petitioner's trial, he cannot be found ineffective. The PCR court's finding that Trial Counsel's strategy was valid is supported by probative evidence in the record, including Trial Counsel's testimony and explanation of his actions at the evidentiary hearing and his cross-examination and closing argument at trial, which support this strategy. Accordingly, because the PCR court's ruling is supported by probative evidence in the record, and because Trial Counsel clearly articulated a valid strategic reasoning for his actions, he cannot be found ineffective under Strickland, and this Court should affirm the denial of post-conviction relief.

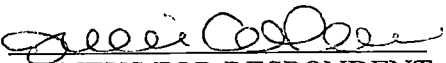
CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
S.C. Bar No. 102214

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

June 11, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Court of Common Pleas
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2017-001177

Terry L. McCarrell, ... Petitioner,

v.

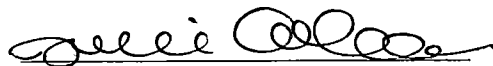
State of South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

I, Julie A. Coleman, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

I further certify that all parties required by Rule to be served have been served. This 11th day of June, 2018.



JULIE A. COLEMAN
S.C. Bar # 102214
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

Terry Lemoire McCarrell, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001177

ORDER

This matter is before the Court on a petition for a writ of certiorari. Based on the vote of the panel, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

FOR THE COURT

BY V. Elaine Allen, Deputy
CLERK

Columbia, South Carolina

cc:

William G. Yarborough, III, Esquire

Julie Amanda Coleman, Esquire

The Honorable Brooks P. Goldsmith

FILED

April 10, 2019



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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July 17, 2019

Mr. William G. Yarborough, III, Esquire
308 W. Stone Ave.
Greenville SC 29609

Ms. Lauren Carole Hobbis, Esquire
308 West Stone Avenue
Greenville SC 29609

Re: Terry L. McCarrell v. State
Appellate Case No. 2017-001177

Dear Counsel:

Our records reflect that the time for serving and filing the petitioner's brief and additional copies of the appendix has expired. Within ten days of the date of this letter, you must serve and file the petitioner's brief and additional copies of the appendix, along with a motion requesting permission to serve and file the petitioner's brief and appendices outside of the filing deadlines set by Rule 243(j) of the South Carolina Appellate Court Rules. Your petitioner's brief and appendix will not be considered and your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Taylor Zane Smith, Esquire

The South Carolina Court of Appeals

Terry Lemoire McCarrell, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001177

The Honorable Brooks P. Goldsmith
Greenville County
Trial Court Case No. 2016CP2301089

ORDER

Petitioner has failed to serve and file the petitioner's brief and additional copies of the appendices, as required by Rule 243(j) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

William G. Yarborough, III, Esquire

Taylor Zane Smith, Esquire

Lauren Carole Hobbis, Esquire

FILED

August 7, 2019



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 23, 2019

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Terry L. McCarrell v. State
Lower Court Case No. 2016CP2301089
Appellate Case No. 2017-001177

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.A. Kitchings", is written over the typed name.

CLERK

Enclosure

cc: William G. Yarborough, III, Esquire
Taylor Zane Smith, Esquire
Lauren Carole Hobbs, Esquire
Terry L McCarrell, 171323

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Terry Lemore McCarrell, #171323)

Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

2021-CP-23-02559

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina)

v.)

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 concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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

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

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence General Session, Greenville County
3. Name(s) of co-defendant(s) (if any) No
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-23-000967 2nd Degree Criminal Sexual Conduct w/Minor
 - (b) 2012-GS-23-000968 Committing a Lewd Act Upon a Child
 - (c) 2012-GS-23-00162 Contributing to the Delinquency of a Minor
2012-GS-23-002622 Grand Larceny
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 8, 2014 Twenty years, Fifteen years, Five years,
 - (b) and Three years with all sentences running concurrently.

Revised 3/2003

- (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?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 13, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See Attachment.

10. Concisely the ground on which I base my allegation that I am being held in custody unlawfully:

(a) That the Applicant was denied and deprived Due Process and Equal Protection of Law under the Fourteenth Amendment of the United States Constitution. As well as Article One Section Three of the South Carolina to appeal his Post-Conviction Relief application Case Action No. 2016-CP-42-01089, after requesting to do so. And where Applicant did not knowingly and intelligently waive the right to appeal.

11. Concisely the facts which support the ground set out in (10):

In light of the newly South Carolina Constitutional provisions crafted by the Supreme Court of South Carolina in Mack v. State, 2021 WL 1659859, the Applicant is entitled to a full adjudication on the merits of the second PCR application or, "one bite of the apple" because he was prevented from seeking review of the denial of his PCR application due to counsel's deficient conduct in "failing to serve and file his brief and copies of the appendix as required by Rule 243(J), SCACR".

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

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

- (a) See Attachment
- (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? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? ✓

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. Post-Conviction Relief Application
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Court of Common Pleas, Greenville County
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Dismissed
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. August 13, 2015
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. None
- 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. NA
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. NA
- 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) Not available
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
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. Alex R. Stalvey, Esquire, Greenville County
 - ii. Susan B. Hackett, Esquire, South Carolina Appellate Defense Office
 - iii. William G. Yarborough, III, Greenville County
- (b) the proceedings at which each such attorney represented you:
- i. Trial
 - ii. Direct Appeal
 - iii. Post-Conviction Relief Action
19. State clearly the relief you seek in filing this application:
Permission to obtain belated review of his Post-Conviction Relief
Action Case No. 2016-CP-23-01089
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION)

Terry L. McCarrell

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.

Terry L. McCarrell ✓

SWORN to and subscribed before me this 17th
day of May, 2021.

Nancy C. Cohle (L.S.)
Notary Public

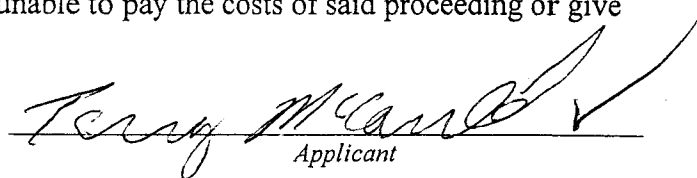
My Commission Expires: 1-23-2023

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

Terry L. McCarrell

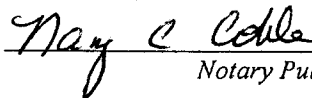
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

17th day of May, 2021.


Notary Public

My Commission Expires: 1-23-2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Terry Lemoire McCarrell, #171323,	)	Case No.: 2021-CP-23-02559
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State of South Carolina (“Respondent”), making its return to the application for post-conviction relief filed by Terry Lemoire McCarrell (“Applicant”) on May 27, 2021, would respectfully show this Court:

I. Procedural History

During its February of 2013 term, the Greenville County Grand Jury indicted Applicant for second-degree criminal sexual conduct with a minor (2012-GS-23-000967) and committing a lewd act upon a child (2012-GS-23-000968). During its June of 2014 term, the Greenville County Grand Jury indicted Applicant for contributing to the delinquency of a minor (2012-GS-23-001662) and grand larceny (2012-GS-23-002622). On July 7-8, 2014, Applicant proceeded to a jury trial in his absence with the Honorable Robin B. Stilwell presiding. Applicant was represented by Alex R. Stalvey (“trial counsel”), Esquire. Lisa Bentley Parrish and Andrew Scott Culbreath, both of the Thirteenth Circuit Solicitor’s Office, prosecuted the case. At the conclusion of trial, the jury found Applicant guilty as indicted. On July 10, 2014, Applicant again appeared before Judge Stilwell so that the sentences could be entered. Judge Stilwell sentenced Applicant to the following concurrent sentences, with credit for time served: for contributing to the delinquency of a minor, to three years’ imprisonment; for grand larceny, to five years’ imprisonment; for committing a lewd act

upon a child, to fifteen years' imprisonment; and for second-degree criminal sexual conduct with a minor, to twenty years' imprisonment. Judge Stilwell also ordered that Applicant be placed on the sex offender registry.

Trial counsel filed a timely notice of appeal. Appellate Defender Susan B. Hackett ("appellate counsel") of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Appellate counsel filed a motion to be relieved as counsel and a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing that Judge Stilwell erred in allowing a witness to testify regarding his identification of Applicant because the witness's identification was tainted by law enforcement officers' use of an unnecessarily suggestive identification procedure. The South Carolina Court of Appeals granted appellate counsel's motion to be relieved and dismissed the appeal in an unpublished opinion. State v. McCarrell, Op. No. 2016-UP-005 (Ct. App. filed January 13, 2016) (per curiam). The remittitur was issued on January 29, 2016.

2015-CP-23-04291

Applicant, through William G. Yarborough, III, Esquire, filed an application for post-conviction relief on July 6, 2015.¹ Applicant raised multiple claims in that application, which Respondent interprets as follows: (1) trial counsel was constitutionally ineffective for not moving to sever the trial; (2) trial counsel was constitutionally ineffective for not preventing the allegedly tainted admission of a victim's identification of Applicant; (3) trial counsel was constitutionally ineffective for not preventing the admission of a photographic lineup that including a photograph of Applicant; and (4) trial counsel was constitutionally ineffective for not objecting to the introduction of various instances of prejudice to Applicant, and to testimony and evidence that

¹ Technically, this was Applicant's first application for post-conviction relief with respect to the underlying criminal convictions; however, since this first application was dismissed without prejudice for being filed too early, the undersigned will not refer to it as the first application throughout the remainder of this return.

were unduly prejudicial to Applicant. On August 18, 2015, Respondent filed a return, which included a motion to dismiss the application without prejudice as Applicant's direct appeal was still pending, citing Rule 71.1(b), SCRCF. On August 13, 2015, the Honorable Letitia H. Verdin issued an order granting the State's motion to dismiss the application without prejudice.

2016-CP-23-01089

Applicant, through Yarborough, filed his first application for post-conviction relief on February 22, 2016, raising the identical claims raised in the previous application. Those issues were: (1) trial counsel was constitutionally ineffective for not moving to sever the trial; (2) trial counsel was constitutionally ineffective for not preventing the allegedly tainted admission of a victim's identification of Applicant; (3) trial counsel was constitutionally ineffective for not preventing the admission of a photographic lineup that including a photograph of Applicant; and (4) trial counsel was constitutionally ineffective for not objecting to the introduction of various instances of prejudice to Applicant, and to testimony and evidence the admission of which was unduly prejudicial to Applicant. On August 23, 2016, Respondent filed a return to the application, moving for a more definite statement as to one of Applicant's claims and requesting that the post-conviction relief court convene an evidentiary hearing regarding Applicant's claims.

On February 23, 2017, the parties appeared before the Honorable Brooks P. Goldsmith for an evidentiary hearing. Yarborough represented Applicant, and Assistant Attorney General Julie Coleman Hunter represented Respondent. On April 20, 2017, Judge Goldsmith issued an order denying the application and dismissing it with prejudice.

Yarborough filed a timely notice of appeal in the Court of Appeals. During the course of the appeal, Lauren Carole Hobbs, Esquire, also filed a notice of appearance on Applicant's behalf. On May 19, 2017, the Court of Appeals issued an order transferring the appeal to the South Carolina Supreme Court. On February 9, 2018, Yarborough filed a motion for leave to file the

petition and appendix out of time on the basis that the documents, which had been mailed to the Supreme Court on the due date, did not arrive at the Court. On that same day, Yarborough filed an appendix and a petition for a writ of certiorari, arguing that Judge Goldsmith erred in finding that trial counsel was not constitutionally ineffective for not moving to sever the charges. In an order issued on February 9, 2018, the Supreme Court granted Yarborough's motion and accepted the petition for a writ of certiorari and appendix as filed and served. After Respondent filed a return to the petition, the Supreme Court transferred the appeal to the Court of Appeals.

In an order issued on April 10, 2019, the Court of Appeals granted Applicant's petition for a writ of certiorari. In a letter dated July 17, 2019, the Court of Appeals notified Yarborough and Hobbis that the date for serving and filing the petitioner's brief and for providing additional copies of the appendix had passed and that the appeal would be dismissed if they did not comply with the requisite rule and move for leave to file them late within ten days. The Court of Appeals later dismissed the appeal because Applicant failed to comply with the instructions of the aforementioned letter. McCarrell v. State, Ct. App. Order filed August 7, 2019. The remittitur was issued on August 23, 2019.

2017-CP-23-03480

Applicant, again through Yarborough, filed a second application for post-conviction relief on May 30, 2017, raising the identical issues raised in the first application. Again, those issues were: (1) trial counsel was constitutionally ineffective for not moving to sever the trial; (2) trial counsel was constitutionally ineffective for not preventing the allegedly tainted admission of a victim's identification of Applicant; (3) trial counsel was constitutionally ineffective for not preventing the admission of a photographic lineup that including a photograph of Applicant; and (4) trial counsel was constitutionally ineffective for not objecting to the introduction of various instances of prejudice to Applicant, and to testimony and evidence the admission of which was

unduly prejudicial to Applicant. On August 24, 2020, Respondent filed its return, moving to dismiss the application summarily because it was untimely filed, was impermissibly successive, and raised claims that were barred by the doctrine of res judicata.

On August 17, 2020, the Honorable Alex Kinlaw, Jr., issued a conditional order of dismissal, conditionally granting Respondent's motion to dismiss and giving Applicant twenty days upon the service of the order upon his lawyers, in which to file a response providing reasons, factual or legal, that the dismissal should not become final. Respondent served Yarborough with the conditional order of dismissal by email on September 9, 2020. On May 17, 2021, the Honorable Perry H. Gravely issued an order granting Respondent's motion for the summary dismissal of the application, noting that Applicant failed to file a response to Judge Kinlaw's conditional order of dismissal, and denying the application and dismissing it with prejudice.

Applicant did not appeal Judge Gravely's order.

II. Current Application

In his third and current application for post-conviction relief filed on May 27, 2021, Applicant argues he is entitled to relief based upon, in Respondent's interpretation, the following single reason: (1) Applicant did not knowingly and voluntarily waive his right to appellate review of the denial of his application for post-conviction relief. Applicant that the Court would grant him relief by way of allowing him to obtain belated appellate review of the denial of his first application for post-conviction relief.

Attached to this return and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding Applicant's convictions and sentences; Applicant's direct appeal records, including the record on appeal, appellate counsel's Anders brief, the Court of Appeals' dispositive opinion, and the remittitur; Applicant's records from the South Carolina Department of Corrections; and the records from Applicant's previous applications for post-

conviction relief and their appeals, including the appendix, motions, court orders, and pleadings specifically identified in this return. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Applicant's claim

Respondent raises the claim that he did not knowingly and voluntarily waive appellate review of the denial of his first application for post-conviction relief. Respondent moves for the summary dismissal of the application on the basis that the application is impermissibly successive. Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the

proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” that new grounds were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. at 450. If the applicant could have raised the allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Even if Applicant’s allegations that he did not knowingly and voluntarily waive his right to appellate review of Judge Goldsmith’s denial of his first application for post-conviction relief, Applicant would have had to raise the claim in his second application for post-conviction relief in order to be heard on the merits of the claim. While it is true that Yarborough represented Applicant in both the first and third post-conviction relief actions, and that the Court of Appeals dismissed the appeal from Judge Goldsmith’s denial of Applicant’s first application for post-conviction relief after Applicant filed his second application, Applicant still had the opportunity to raise the claim during his second PCR action. For example, Applicant could have raised the claim in an amendment to his second application, in a response to Respondent’s motion to dismiss the second application summarily, or in a filed response to Judge Kinlaw’s order conditionally dismissing the second application. By not doing so, Applicant waived his right to raise the claim in a future application. That future application is this third and current application. For this reason, the Court should dismiss this application summarily.

If the Court does not dismiss the application summarily, Respondent requests that the Court convene an evidentiary hearing regarding the claim that Applicant has raised. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), “a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal.” Odom v. State, 337 S.C. 256, 259-60, 523 S.E.2d 753, 755 (1999) (citations omitted). The Supreme Court “has allowed successive PCR applications where the applicant has been denied complete access to the appellate process. Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’ This ‘bite’ includes an applicant’s right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal.” Id. at 261, 523 S.E.2d at 755-56 (citations omitted). An Austin appeal is an appeal used whenever an applicant for post-conviction relief has been thwarted from seeking appellate review of the denial of his application, such as when his former lawyer failed to seek timely review of the denial. Id. at 261, 523 S.E.2d at 756. “A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for certiorari and this Court will review whether the petitioner was prejudiced by the failure to obtain appellate review.” Id. at 262, 523 S.E.2d at 756 (citations omitted). Respondent requests that an evidentiary hearing be convened in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d

707 (1981)).

IV. Denial of All Other Claims

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

V. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“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(a) (2008), an applicant in a noncapital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good cause, Respondent will oppose those attempts.

VI. Conclusion

WHEREFORE, Respondent requests that the Court dismiss the application summarily because it is impermissibly successive or, in the event that the Court denies Respondent’s motion to dismiss, convene an evidentiary hearing as to Applicant’s claim that he did not knowingly and voluntarily waive his right to appellate review of his first application for post-conviction relief.

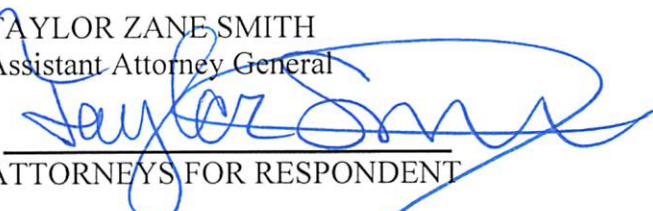
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
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By: 
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September 22, 2021

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	) 2021CP2302559
COUNTY OF GREENVILLE	)
	)
	)
	)
TERRY LEMORE MCCARRELL	)
APPLICANT	)
vs.	) TRANSCRIPT OF RECORD
	)
STATE OF SOUTH CAROLINA	)
RESPONDENT	)

September 21, 2023
Greenville, South Carolina

B E F O R E:

THE HONORABLE GRACE G. KNIE, Judge.

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

SUSANNAH ROSS, ESQ.
Attorney for The Applicant

MELANIE BROWN, ESQ.
Attorney for The State

APRIL HERRON
Official Court Reporter

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Certificate of Reporter 12

There were no exhibits.

1 THE COURT: Okay, at this time, we are on the
2 record with regard to Terry Lemoire McCarrell. And
3 this is civil action number CP-23-2559. Counsel, if
4 you all will, please identify yourselves for the
5 record.

6 MRS. ROSS: I'm Susannah Ross and I'm
7 representing Mr. McCarrell.

8 MS. BROWN: Melanie Brown for The State.

9 THE COURT: Okay. Thank you.

10 And Mr. McCarrell is present this morning. Good
11 morning, sir.

12 MR. MCCARRELL: Good morning.

13 THE COURT: I am Judge Knie and this is a term
14 of PCR court in Greenville County. And our court
15 reporter is April heron. This hearing is being
16 conducted in person. All counsel are present, along
17 with The Applicant, Mr. McCarrell, who is physically
18 present in the courtroom.

19 And so, Ms. Ross, it is nice to see you again, I
20 haven't seen you in a while.

21 MRS. ROSS: Thank you, Your Honor.

22 THE COURT: And so would it suit if I get a
23 brief procedural history from Ms. Brown and then we
24 will begin?

25 MRS. ROSS: Yes.

1 THE COURT: Okay, thank you.

2 Ms. Brown.

3 MS. BROWN: Thank you, Your Honor, may it please
4 the Court. Mr. McCarrell was tried in his absence
5 July 7th through 8th of 2014. He was represented by
6 Alex Stalvey. The jury returned guilty verdicts on
7 these charges, CSC with a minor, lewd act,
8 contributing to the delinquency of a minor and grand
9 larceny. The sentences were sealed and on July 10th
10 of 2014, Mr. McCarrell appeared and was sentenced to
11 20 years for CSC, 15 for lewd act, three for
12 contributing to the delinquency of a minor and five
13 for grand larceny. He was ordered to be on the sex
14 offender registry. He timely appealed. That
15 appealed was perfected through the Anders process.
16 The convictions and sentences were affirmed by
17 unpublished opinion issued January 13th of 2016.
18 Remitter came out on January 29th of 2016 and
19 Mr. McCarrell turned post-conviction relief.

20 And I am going to take, with your permission,
21 Your Honor, a little bit of time on this because it
22 flows into the issue that's before you today. This
23 is not Mr. McCarrell's first PCR. His first PCR was
24 filed back in 2015. That was dismissed because he
25 was then on direct appeal. His second PCR was filed

1 in 2016. That one went to a hearing, Your Honor.
2 Relief was denied. He timely appealed. Through the
3 appellate process, the Supreme Court transferred the
4 case to the South Carolina Court of Appeals. The
5 Court of Appeals granted a position and ordered
6 additional briefing. However, additional briefing
7 was not accomplished. The appeal was dismissed and
8 the remittitur issued August 7th of 2019.

9 Now, while that was still pending, Your Honor,
10 Mr. McCarrell filed a 2017 action on May 30th of
11 2017. That was summarily dismissed. And today,
12 we're here on an application that we filed May 17th
13 of 2021. Your Honor, the sole issue that he is
14 asking relief on is to finish -- essentially, finish
15 his appeal that was not finished in his 2016 PCR
16 action. And that's why I took a little bit more time
17 on that. And with that procedural history, I would
18 turn it over to opposing counsel.

19 THE COURT: And so respondent is not in
20 agreement that he would do that?

21 MS. BROWN: Your Honor, we have discussed this
22 and the only thing that we would like on the record,
23 so it would satisfy Austin v. State, is information
24 that would show that it was not a knowing and
25 voluntary waiver or that that didn't direct that the

1 petition not be filed or anything that would show
2 that he directed that to end. Once that's on the
3 record, it was a knowingly and voluntary waiver, I
4 believe there's a factual basis for Your Honor to
5 find that, in fact, he is entitled to Austin. And
6 upon information and belief, I believe that's what
7 you might hear today.

8 THE COURT: Okay. Well that helps me a lot.
9 Thank you.

10 Okay, Mrs. Ross.

11 MRS. ROSS: Thank you, Your Honor, may it please
12 the Court.

13 THE COURT: Yes.

14 MRS. ROSS: Mr. McCarrell, in our conversations,
15 has asked for one fair bite at that apple. And at
16 this point, we call Mr. McCarrell to the stand.

17 THE COURT: Okay, sir, come on up. I'm going to
18 have you sworn, okay. Watch your step.

19 THE CLERK: Mr. McCarrell, please place your
20 left hand on the Bible and raise your right hand.

21 TERRY MCCARRELL, after being duly

22 sworn{,}testified as follows:{F}

23 THE CLERK: Thank you, you may be seated.

24 THE COURT: Please make yourself comfortable.

25 THE WITNESS: Yes, ma'am.

TERRY MCCARRELL-DIRECT BY MRS. ROSS

1 THE CLERK: Please state your name for the
2 record.

3 THE WITNESS: Terry Lemoire McCarrell.

4 THE COURT: Sir, you will be on direct
5 examination, okay?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Mrs. Ross.

8 DIRECT EXAMINATION

9 BY MRS. ROSS:

10 Q Good morning, Mr. McCarrell, just directing your
11 attention to the appeal of your PCR, did you request that
12 appeal be perfected?

13 A Yes, I requested appeal for my denial of my PCR.

14 Q Okay. And it was dismissed summarily?

15 A Yeah, they dismissed it. I didn't know it was
16 dismissed until you gave me the return papers.

17 Q Did you tell anyone to dismiss it?

18 A No.

19 Q So you wanted that appeal and it did not happen?

20 A Yes, ma'am.

21 Q And do you believe that was because of error of
22 your counsel?

23 A Yeah.

24 MRS. ROSS: All right, no further questions.

25 THE COURT: Okay, anything, Ms. Brown?

WILLIAM YARBOROUGH-DIRECT BY MRS. ROSS

1 MS. BROWN: No questions, Your Honor. Thank
2 you.

3 THE COURT: Okay. Thank you, sir. Watch your
4 step, okay.

5 MRS. ROSS: Judge, at this point, we would call
6 William Yarborough.

7 WILLIAM YARBOROUGH, after being duly sworn,
8 testified as follows:

9 THE CLERK: Please state your name full name for
10 the record.

11 THE WITNESS: May name is William G. Yarborough.

12 DIRECT EXAMINATION

13 BY MRS. ROSS:

14 Q Good morning, Mr. Yarborough.

15 A Good morning.

16 Q You heard the testimony of Mr. McCarrell, did he
17 request an appeal of his case?

18 A He did request an appeal. I believe we filed
19 one. And as I told you earlier this morning, we were
20 moving at that point and I'm not 100 percent sure when the
21 remittitur came back from the Court of Appeals -- or the
22 Supreme Court sent it over to the Court of Appeals but,
23 obviously, we didn't perfect it.

24 Q All right. And this --

25 Judge, this is part of the bound

WILLIAM YARBOROUGH-DIRECT BY MRS. ROSS

1 transcript.

2 But is this the order dismissing it?

3 A That's the order dismissing it.

4 Q It's dated?

5 A August 1 or 7th of 2019. I reviewed all that
6 this morning, I think that is correct.

7 MRS. ROSS: Judge, may I approach, would you
8 like to?

9 THE COURT: Sure. What page is that?

10 MRS. ROSS: I've got it right here. I know it's
11 not Bates stamped.

12 THE COURT: Okay.

13 MRS. ROSS: I can just hand you -- I have marked
14 the little tab.

15 THE COURT: Okay, thank you. Okay. Okay. So
16 yes, August the 7th of 2019. Okay.

17 BY MRS. ROSS:

18 Q And that was in no way Mr. McCarrell's wish that
19 that would be dismissed--

20 A No, it was not --

21 Q -- prior to it being heard.

22 A I've gone back and looked, I'm not 100 percent
23 sure why we didn't receive that or what happened. But I
24 think he certainly was entitled to it.

25 MRS. ROSS: Thank you, I've got no further

WILLIAM YARBOROUGH-DIRECT BY MRS. ROSS

1 questions.

2 THE COURT: Ms. Brown?

3 MS. BROWN: No questions, Your Honor.

4 THE COURT: Okay, any objection to

5 Mr. Yarborough being excused?

6 MS. BROWN: Not at all.

7 MRS. ROSS: No, Your Honor.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Although, I think you're supposed to
10 be here later.

11 Mrs. Ross, anything else?

12 MRS. ROSS: No, Your Honor.

13 THE COURT: Ms. Brown?

14 MS. BROWN: Nothing further, Your Honor.

15 THE COURT: Okay.

16 And so, Ms. Ross, the relief again being
17 requested is that Mr. McCarrell be allowed to pursue
18 the appeal?

19 MRS. ROSS: Yes, Your Honor.

20 THE COURT: And I will grant that relief to him.

21 Sir, I do wish you the very best.

22 And, Mrs. Ross, I will ask you if you could
23 draft a very brief order to that effect and run it by
24 Ms. Brown.

25 MRS. ROSS: I will, Your Honor, thank you.

1 MS. BROWN: Thank you, ma'am.

2 THE COURT: Good luck to you, sir.

3 MR. MCCARRELL: Thank you, ma'am.

4 (WHEREUPON, the proceedings were concluded.)

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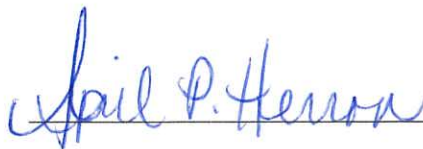
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
21st day of September, 2023.

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

May 1, 2025



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

TERRY MCCARRELL,)
 APPLICANT.)
)
)

**ORDER GRANTING
AUSTIN V. STATE
 BELATED PCR APPEAL**

STATE OF SOUTH CAROLINA,)
 RESPONDENT.)
)
)

CASE # 2021-CP-23-2559

ENTERED COMPUTER

23 OCT 17 PM 12:57
 Brice Garrett, COC GUL SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2021. An evidentiary hearing into the matter was convened September 21, 2023, in the Greenville County Courthouse. The Applicant was present represented by Susannah C. Ross, Esquire. Assistant Attorney General Melody Brown represented the Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in Perry Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted for second-degree criminal sexual conduct with a minor (2012-GS-23-0967), committing a lewd act on a child (2012-GS-23-968), contributing to the delinquency of a minor (2012-GS-23-0162), and grand larceny (2012-GS-23-2622). The Applicant was tried and found guilty as indicted. He was sentenced to concurrent terms of twenty years, fifteen years, five years, and three years.

The Applicant filed a PCR application (2016-CP-23-1089) February 22, 2016. An evidentiary hearing was convened on February 23, 2017, at the Greenville County Courthouse before the Honorable Perry H. Gravely. William G. Yarborough, III, Esquire represented the Applicant and Assistant Attorney General Julie A. Coleman represented the State. The PCR

court denied relief by Order filed May 10, 2017. The Applicant filed a timely notice of appeal which was later transferred to the Court of Appeals. After a July 27, 2019, letter to Mr. Yarborough warning of dismissal for failure to comply with Rule 243(j) of the South Carolina Appellate Court Rules, Appellate Case Number 2017-001177 was dismissed by Order filed August 7, 2019.

ALLEGATIONS

In his current PCR application, the Applicant alleges ineffective assistance of PCR counsel for failure to assure an appeal from case number 2016-CP-23-1089's Order filed on May 10, 2017, denying post-conviction relief.

ARGUMENT AND TESTIMONY PRESENTED

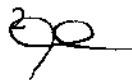
The Applicant alleged ineffective assistance of PCR counsel for failing to comply with Rule 243(j) of the South Carolina Appellate Court Rules resulting in the dismissal of the Applicant's PCR appeal. He said that he made it clear to his PCR council that he wanted an appeal.

William G. Yarborough, III, Esquire testified that he represented the Applicant and that the Applicant had requested but was denied an opportunity to seek appellate review due to the circumstances in this case. He stated he moved during this period and may not have seen the notices but admitted that he "had dropped the ball".

The Respondent conceded that the Applicant was entitled to a belated appeal due to his prior PCR attorney's failure to perfect his appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the Applicant's allegation that he is entitled to a belated appeal due to his prior PCR attorney's failure to perfect an appeal on his behalf is not procedurally barred



and is meritorious. Where a post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).¹ See also King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992).

This Court further finds the Applicant did not knowingly and voluntarily waive his right to appellate review and this therefore entitled to a belated review of the denial of his PCR application. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). The Applicant never received a full “bite at the apple” because he expressed his desire to seek review of the denial of his PCR application pursuant to his state law rights set fourth in S.C. Code Ann. Sec. 17-27-100 and his appeal was never perfected. The Applicant’s denial of an appeal can be remedied by a petition for belated review by his current PCR attorney pursuant to Austin v. State. See id.

CONCLUSION

All allegations except the belated appeal pursuant to Austin v. State are barred because they are successive. The Applicant has proven by a preponderance of the evidence that he did not knowingly and voluntarily waive the appeal of the denial of his first PCR application.

IT IS THEREFORE ORDERED:

1. That the Austin claim is granted and the claim that PCR counsel failed to adequately preserve the record is denied;
2. Within thirty (30) days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate appellate review of the Applicant’s first post-conviction relief

¹ Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the Applicant must petition the Supreme Court for a belated review. Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

action. Counsel and the Applicant are directed to King v. State,
308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 227, SCACR for
the appropriate procedure for a belated appeal.

AND IT IS SO ORDERED this 12 day of October, 2023.



Grace Gilchrist Knie
Circuit Court Judge
Thirteenth Judicial Circuit

Sp. Anthony

Greenville, South Carolina.



WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

12/28/2011

ARREST WARRANT NUMBER

M991579

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-000967

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2013

THE STATE

vs.

TERRY LEMORE MCCARRELL

Indictment for

0396 ✓

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)**

**VIOLATION § 16-3-655(B)(1) [formerly § 16-3-
655(2)]**

**ENTERED
ACCT.**

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

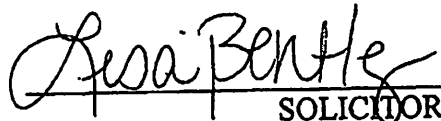
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(11-14)

At a Court of General Sessions, convened on **FEB 19 2013** the Grand Jurors of Greenville

County present upon their oath:

That TERRY LEMORE MCCARRELL did in Greenville County, between the 1st day of May, 2011 and the 27th day of December 2011, commit a sexual battery on K.C.O., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Terry Lemore Mccarrell

AKA:

Race: BLACK Sex: M Age: 49DOB: -1963 SS# [REDACTED]Address: RUTHERFORD CT.City, State, Zip: GREENVILLE, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bentley, LisaSC Bar# 77787

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed 2 yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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.

☒ 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 the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$	
	\$	
\$100	\$	100
\$100	\$	
\$12	\$	
\$25	\$	
\$500	\$	
\$25	\$	25
\$150	\$	
\$50	\$	
\$40/ea	\$	
\$5	\$	
\$	\$	3.90
	\$	133.90

 days/hours Public Service EmploymentObtain 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 FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.
Presiding Judge Judge Code: 258Sentence Date: 8 JUL 14Clerk of Court/ Deputy Clerk Paul B. WickenhamCourt Reporter: A. Huron

SCCA/217 (03/2011)

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

12/28/2011

ARREST WARRANT NUMBER

M991580

**ACTION OF GRAND JURY
TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-000968

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2013

THE STATE

vs.

TERRY LEMORE MCCARRELL

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

**ENTERED
ACCT.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

FEB 19 2013

the Grand Jurors of Greenville

County present upon their oath:

That TERRY LEMORE MCCARRELL did in Greenville County, between the 1st day of May 2011, and the 27th day of December 2011, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of K.C.O., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

575

COUNTY OF Greenville
 STATE VS.
Terry Lemoire Mccarrell

AKA:

Race: BLACK Sex: M Age: 49DOB: -1963 SS# [REDACTED]Address: RUTHERFORD CT.City, State, Zip: GREENVILLE, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)INDICTMENT/CASE#: 2012GS2300968A/W#: M991580Date of Offense: 9/1/2011S.C. Code §: 16-15-140CDR Code #: 2468

SENTENCE SHEET

in violation of § 16-15-140of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

ATTEST

Bentley, Lisa

SC Bar# 77757

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 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 — days/months/years 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.

☒ 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 the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP —— days/hours Public Service EmploymentObtain 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 FundOther: —

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: A. Herrera

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 257Sentence Date: 8 JUL 14

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

12/28/2011

MA

ARREST WARRANT NUMBER
1509496

ACTION OF GRAND JURY
TRUE BILL

Nancy M. Ellis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-^{BSD} 001662

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

2014
TERM 2012

THE STATE

vs.

TERRY LEMORE MCCARRELL

Indictment for

0048

**CONTRIBUTING TO THE DELINQUENCY OF A
MINOR**

VIOLATION § 16-17-0490

**ENTERED
ACCT.** *JP*

RECEIVED

MAR 15 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONTRIBUTING TO THE DELINQUENCY OF A MINOR

JUN 24 2014

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That TERRY LEMORE MCCARRELL did in Greenville County, on or about the 14th day of November, 2011, knowingly and willfully encourage, aid, or cause K.C.O., a minor, to do any act which caused or influenced K.C.O. to deport herself in a manner so as to willfully injure or endanger her morals or health or the morals or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Terry Lemore Mccarrell

AKA:

Race: Sex: M Age: 51

DOB: 1963 SS#: [REDACTED]

Address: RUTHERFORD CT.

City, State, Zip: GREENVILLE, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Minor / Contributing to the delinquency of a minor

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2301662

A/W#: 1509496

Date of Offense: 11/14/2011

S.C. Code §: 16-17-0490

CDR Code #: 0048

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

in violation of § 16-17-0490 of the S.C. Code of Laws, bearing CDR Code # 0048

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attest: [Signature] 77787

Bentley, Lisa

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 3 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 days/months/years 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.

☒ 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 the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: A. Heron

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158

Sentence Date: 7-8-14

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

12/20/2011

[Handwritten signature]

ARREST WARRANT NUMBER

1509492

ACTION OF GRAND JURY
TRUE BILL

Nancy M. Ellis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-
BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

2014
TERM 2012

THE STATE

vs.

TERRY LEMORE McCARRELL

Indictment for

3420

GRAND LARCENY

VIOLATION §16-13-0030

ENTERED
ACCT. *LOP*

002622

RECEIVED

APR 13 2012

Clerk of Court
Greenville County

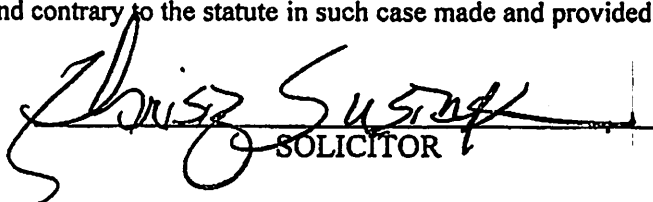
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on **JUN 24 2014** the Grand Jurors of Greenville
County present upon their oath:

That TERRY LEMORE McCARRELL did in Greenville County, on or about the 14th day of November
2011, feloniously take and carry away the personal property of TAMILA WOODARD to wit:
JEWELRY, with a total value of more than Two Thousand Dollars with the intent to deprive the owner
permanently of such property. This is in violation of §16-13-0030 of the South Carolina Code of Laws
(1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Terry Lemore Mccarrell

AKA:

Race: BLACK Sex: M Age: 49DOB: 1963 SS#: [REDACTED]Address: RUTHERFORD CT.City, State, Zip: GREENVILLE, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000INDICTMENT/CASE#: 2012GS2302622A/W#: I509492Date of Offense: 11/14/2011S.C. Code §: 16-13-0030(B)CDR Code #: 3420

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Bentley, Lisa77787
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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 days/months/years 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.

☒ 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 the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP days/hours Public Service EmploymentObtain 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 FundOther:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: A. Heron

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2128Sentence Date: 8 JUL 14