

Re: Indictment NO: 2024GS 3201537

An appeal has been filed on my behalf by Hali M. Selert of the Lexington County Public Defender's. I wish to appeal only the guilty plea on the charge of Domestic Violence High and aggravated Nature, Indictment # 2024GS 3201537.

I wish to appeal based on three issues.

1) Ineffective assistance of counsel.

Strickland v. Washington (104 S.Ct. 2052)

Counsel's performance was deficient in multiple ways.

- I explained to Miss Selert that I would only ^{plea} of all other charges were dismissed, not nolle pross, because I wanted to expunge them from my history free of charge. I communicated this to her through the email system at the county jail.

- I asked multiple times for Miss Selert to come see me in the jail to go over my motions of discovery, to include review of all video evidence in my cases. She only sent her investigator to show me the videos.

- I insisted on going to trial. I told Miss Selert that I never cohabited with the victim. Miss Selert told me that because victim and I were boyfriend/girlfriend in a sexual relationship and had spent the night together, the demanding crucial element of S.C. Code 16-25-65, "Household Member" had been met.

The information, which I now find to be false, prejudiced my decision to go to trial. I entered into plea negotiations based on bad information from counsel.

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- Miss Selert did not further investigate, no witnesses were interviewed, and she made no attempt to get a full copy of the ring doorbell footage for the alleged incident.

- Williams v. State (306 S.C. 89, 410 S.E.2d 563 (1991))

¶ 91, (3) Penal Statutes are to be construed strictly against the State and in favor of the defendant. State v. Cutler (274 S.C. 376, 264 S.E.2d 470 (1980)). As was aptly summarized by Chief Justice Marshall in United States v. Wiltberger (18 U.S. 5) 5 Wheaton 76, 95-96, 5 L.Ed. 37, 42 (1820)

The rule, that penal laws are to be construed strictly, is perhaps not much less^{ad} than construction itself. It is founded on the tenderness of the law for the rights of the individuals; and on the plain principle that the power of punishment is vested in the legislature, not the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment.

The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction....

- The above case applies to the misinformation I received from Miss. Selert regarding "household member." S.C. Code 16-25-10 defines "Household member". It is also a matter of law that where a statute does not specifically define a word or term, we are to rely on the common understanding, or definition. Cohabit is defined as - living together in a sexual relationship, or - To live together as a married couple, or in the manner of a married couple.

- Miss Selert was deficient in her performance by leading me to believe. I met the "Household Member" element, thereby prejudicing my decision to plea.

2) The second issue I wish to raise is whether or not there was a factual basis for the judge to accept my guilty plea to the DVHAN charge.

- Federal Rule of Criminal Procedure - Rule 11 (further referred to as Rule 11)
Boyer v. Alabama (345 U.S. 238, 89 S.Ct. 1709, 23 L.Ed 274 (1969))
see McCarthy v. U.S. (89 S.Ct. 1166, 1171) Rule 11 applies to state courts.

- US. v. Trejo (610 F.3d 308, 313 (5th circuit 2010))
Rule 11 mandates that the factual basis be sufficiently specific to enable the district court to compare the conduct admitted by the defendant with the elements of the offense charged.

- State v. Armstrong (263 S.C. 594) South Carolina Supreme Court held that before a guilty plea may be accepted, the court must be certain the defendant understands the nature of the charges and that the record indicate a factual basis for the plea.

- Also relying on McCarthy v. U.S. (89 S.Ct. 1166)

*1171 - Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

- Purpose for requiring factual basis for guilty plea is to assure the court that the conduct which defendant admits by his guilty plea constitutes offense charged in the indictment, or lesser included offense therein.

- During the plea hearing, after the Solicitor had given the judge the "Facts", the victim, Ms. Keller told the judge she and I didn't live together. When I was allowed to address the court I disagreed with the Solicitor's recitation of the facts. The indictment charges that I accomplished DVHAN by choking victim to the point of her losing consciousness.

- No where in the discovery did I or the victim relate to the Investigating Officer that we cohabited at the time, or in the past.

- I did admit to the court that I choked victim, but denied that I caused victim lost consciousness. I offered verifiable evidence to the judge in the form of the footage of the chest camera captured interview of victim just after the incident, and also the video of the actual assault caught on ring. The judge did not watch either.

- The Indictment is for the charge of DVHAN - 16-25-65(A)(2), and the lesser included offense - 16-25-20(A)(1)

DVHAN is accomplished by ~~means~~ "Circumstances manifesting extreme indifference to the value of human life." This is further defined in the statute - "When assault results in a state of stupor, or loss of consciousness." (not verbatim) For the lesser included offense to be met, the chokehold needs to be accomplished and be accompanied with aggravating elements. No aggravating circumstances are mentioned in the indictment.

- My argument is that the factual basis requirement was not met, and was cast into serious doubt based on both my own and the victims statements to the judge.

- Because Miss Selert improperly explained to me about crucial elements, I pleaded guilty. I had previously expressed my wishes to prepare for trial, both over email, and through phone calls.

3)

- Lastly, although I have no cases to cite, I believe the judge and solicitor both exhibited vindictiveness.
- On part of the solicitor, she misrepresented the facts, contrary to the evidence, and also misrepresented her conversations with the victim, which the victim made known in open court.
- The solicitor did this to further her agenda of getting a harsh sentence, even in light of the victim's wishes for mercy in present case.
- On part of the judge, by stating that she was giving me 15 years based on the fact that I had violated my probation, especially being that the probation violation was not before her at the hearing.
- Also by not respecting or considering the victim in the DV/HAW case wishes. Nor did she consider the mitigating evidence presented, offered by defense counsel.

With Gratitude,
Bobby Eric Rutherford
B. E. R.

CC: The Honorable Debra R. McCaslin
Christy M. Oler
Wanda H. Carter

Bobby Eric Rutherford, Appellant Feb. 6th, 2026

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Re: Indictments No(s):

2024 GS 3201537

2025 ~~GS~~ 3204538

2025 GS 3204539

2025 GS 3206544

2025 GS 3206545

Enclosed is my response for the instant appeal filed on my behalf by Hali M. Selert.

Please return a timed stamp copy to me upon receipt.

Please Mail to : Bobby Eric Rutherford #338905
Kirkland R+E - SCDC
4344 Broad River Rd
Columbia, SC 29210

with Gratitude,

Bj Rutherford

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