

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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S.C. Supreme Court

THOMAS MCCALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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INDEX

INDEX i

GUILTY PLEA TRANSCRIPT 1

INDICTMENTS AND SENTENCING SHEETS 29

APPLICATION FOR POST-CONVICTION RELIEF 43

RETURN 48

POST-CONVICTION RELIEF HEARING TRANSCRIPT 54

ORDER OF DISMISSAL 79

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) 06-GS-21-867, 868, and 869
COUNTY OF FLORENCE)

THE STATE,)
)
-vs-) TRANSCRIPT OF RECORD
)
THOMAS ALLEN McCALL,)
JR.,)
)
) Defendant.)

January 29, 2007
Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge.

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

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Attorney for the State

SCOTT P. FLOYD, Esquire
Attorney for the Defendant

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I N D E X

GUILTY PLEA	3
SENTENCE OF THE COURT	26
CERTIFICATE OF REPORTER	27

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No exhibits were presented.)

1 MONDAY, JANUARY 29, 2007

2 (WHEREUPON, at 1:56 p.m., this matter was called for
3 a guilty plea, with the Defendant and counsel present in
4 the courtroom.)

5 THE COURT: Anything from the State before we proceed
6 forward?

7 MR. JEPERTINGER: No, sir.

8 THE COURT: Anything from Defense?

9 MR. FLOYD: Your Honor, it's my understanding that he
10 would like to enter a plea---

11 THE COURT: Okay.

12 MR. FLOYD: ---to the charges; but, Your Honor, there
13 were some charges that the Public Defender was
14 representing him on: financial card fraud. I think
15 there's like two (2) different indictments for that.
16 Looks like a pointing-and-presenting charge. I've never
17 seen those -- those files. I mean, I don't know what
18 they're -- what's in them.

19 MR. JEPERTINGER: I've asked Ms. Braddock to go
20 get---

21 MR. FLOYD: But---

22 MR. JEPERTINGER: ---the Public Defender---

23 MR. FLOYD: But Scott Suggs---

24 THE COURT: Okay.

25 MR. FLOYD: ---apparently hasn't -- has been

1 appointed to represent---

2 THE COURT: All right.

3 MR. FLOYD: ---him on that.

4 THE COURT: When Scott Suggs get here, will y'all --
5 gets here, will y'all let me know?

6 MR. JEPERTINGER: Sure.

7 THE COURT: All right. We'll do that. Just let me
8 know. We'll be ready to proceed shortly.

9 MR. FLOYD: Okay.

10 (Pause.)

11 MR. JEPERTINGER: Your Honor -- Your Honor, of
12 course, I mean, we just ask that none of the jurors would
13 come into the -- the---

14 THE COURT: They aren't.

15 MR. JEPERTINGER: ---courtroom. Keep them in the
16 waiting room.

17 (WHEREUPON, the court conferred with the bailiff.)

18 DEPUTY SOLICITOR JACK W. LAWSON, JR.: We only say
19 that out of precaution because, Your Honor, I've been here
20 and seen -- seen them come back at -- at two (2:00)
21 o'clock when they don't have to be back until four (4).
22 They -- Some of them are just extremely conscientious,
23 apparently.

24 THE COURT: There are no jurors in this room now, is
25 there?

1 (No response.)

2 THE COURT: All right. Good.

3 (WHEREUPON, at 1:59 p.m., court stood in recess; and,
4 at 2:28 p.m., court reconvened, with the Defendant and
5 counsel present in the courtroom.)

6 THE COURT: Mr. Jepertinger, you're recognized.

7 MR. JEPERTINGER: If it please The Court? Your
8 Honor, it's my understanding that this gentleman wants to
9 change his plea to guilty, Your Honor; and we are prepared
10 to handle the matter on three (3) indictments: 06-GS-21-
11 867; 06-GS-21-868, for which we've just drawn the jury;
12 and 06-GS-21-869.

13 In the 867 possess- -- indictment, he's charged with
14 possession of a cocaine base; that would be a first
15 offense.

16 THE COURT: Zero (0) to three (3)?

17 MR. JEPERTINGER: Yes, sir. And up to five thousand
18 (\$5,000) dollars.

19 On 868, he is looking at, obviously, criminal sexual
20 conduct, first degree; that carries up to thirty (30)
21 years.

22 On 869, it would be to an ABHAN, which carries up to
23 ten (10) years. The State is asking for consecutive
24 sentences on these charges, Your Honor.

25 (Pause.)

1 THE COURT: Mr. Floyd, do you represent Mr. Thomas
2 Allen McCall, Jr.?

3 MR. FLOYD: I do, Your Honor.

4 THE COURT: Did you explain to him the offense of
5 assault and battery of a high and aggravated nature, and
6 the fact that he could receive up to ten (10) years for
7 that; the offense of criminal sexual conduct, the fact
8 that criminal sexual conduct, first degree -- the fact
9 that he could receive up to thirty (30) years on that;
10 possession of cocaine base and the fact that he could
11 receive up to three (3) years on that; and the elements of
12 each of these offenses, potential defenses, and his
13 constitutional rights?

14 MR. FLOYD: I have, Your Honor.

15 THE COURT: How does he wish to plead?

16 MR. FLOYD: Guilty, Your Honor.

17 THE COURT: And do you agree with his decision to do
18 so?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: Do you feel, if called upon to do so, the
21 State could prove him guilty beyond a reasonable doubt?

22 MR. FLOYD: I do, Your Honor.

23 THE COURT: All right. Let's place Mr. Thomas under
24 oath, if we could.

25 (WHEREUPON, the Defendant was duly sworn.)

1 MR. FLOYD: Your Honor, before we begin, could I make
2 a comment about the sentencing sheet there?

3 THE COURT: Yes.

4 MR. FLOYD: I signed my name to those sheets. And
5 originally -- It was back several months ago. -- they had
6 agreed to concurrent charges. Of course, that's not the
7 case now;---

8 THE COURT: Right.

9 MR. FLOYD: ---and there is "consecutive" noted above
10 my name;---

11 THE COURT: Right.

12 MR. FLOYD: ---however, I do not want that to be
13 taken as my assent to that.

14 THE COURT: Okay.

15 MR. FLOYD: Okay?

16 THE COURT: Very good. Now, I understand that's just
17 the State's sentiment. It's not a negotiation and that---

18 MR. FLOYD: Right.

19 THE COURT: ---the sentencing, I understand, is going
20 to be left up to The Court.

21 Is that -- Is that your understanding, Mr.
22 Jepertinger?

23 MR. JEPERTINGER: It's only a recommendation.

24 THE COURT: Very good. All right. Mr. Thomas, are
25 you under the influence of any drugs or alcohol here

1 today?

2 DEFENDANT MCCALL: No, sir. No, sir.

3 THE COURT: Are you experiencing any kind of physical
4 or mental problem that could prevent you from
5 understanding what we are doing here today?

6 DEFENDANT MCCALL: No, sir. No, sir.

7 THE COURT: Okay. All right. I want you to pay very
8 close attention to Mr. Jepertinger as he summarizes the
9 facts that bring us here today. If you disagree with
10 anything he says about the facts of the case or your
11 criminal record, I want to hear from you. Is that fair
12 enough?

13 DEFENDANT MCCALL: Yes, sir.

14 THE COURT: Mr. Jepertinger?

15 MR. JEPERTINGER: If it please The Court?

16 Chronologically, Your Honor, the first case would be the
17 869 petition. The victim is the same victim that we have
18 in the current case, the CSC.

19 On the night before the victim was raped by this
20 gentleman, police officers responded to 1410 Waverly
21 Avenue. Lakiesha James stated that this individual and
22 his older brother -- And I state for the record, she is
23 the half-sister of this gentleman and his brother.

24 They got into an argument with her earlier that day.
25 And about nine (9:00) o'clock in the morning, he threw a

1 blanket over her head and threw her on the floor and
2 commenced beating her in her face. The other brother then
3 held the victim down and kicked her in the stomach. Both
4 suspects fled the scene as the officers pulled up.

5 At that time, she was about four (4) months pregnant,
6 Your Honor. And that was -- They also had threatened, on
7 a prior date, to shoot her; so they -- she -- she had
8 taken that assault very seriously based on the condition
9 she was in at the time. And they both beat her.

10 Your Honor, this case, the 868 case for which we've
11 picked a jury -- This happened approximately between four-
12 thirty (4:30) and five (5) in the morning, on March 14th,
13 2006.

14 Your Honor, on that date in question, Ms. James was
15 at her residence at 1410 Waverly Avenue with her father.
16 He got up to go to work, Your Honor; and he left somewhere
17 between four-thirty (4:30) to four-forty (4:40) in the
18 morning. She was up and watching television. She heard a
19 noise as if someone were coming into the home.

20 Now, her father had just used the telephone not too
21 long before. When she picked up the phone, there was no
22 dial tone. Later she found out that someone had
23 disconnected the phone line to the house.

24 The person that came into the house was this man.
25 Apparently, he went to the kitchen; and then he came out.

1 He was armed with a Black Hawk .38 pistol. At that point,
2 he told her to get up.

3 According to him, he was already -- And I'm reading
4 from his statement. "I was already angry about other
5 things that she had done to me, like signing warrants on
6 me, what the other ones that I did do. So, okay. So I
7 started drinking; I started doing things with drugs."

8 He said he had two (2) X-pills and about two (2)
9 ounces of cocaine. "I smoked like three (3), four (4)
10 blunts. So and that had me boost up enough and hype up
11 enough to do what I had to do. So I walks in the house."

12 He got her up, Your Honor, at gun point. He took her
13 into the hallway. He told her to take off her clothes,
14 Your Honor. The clothes she was wearing, Your Honor, --
15 (While indicating) And this would have come into evidence.
16 -- was a small, blue halter top. There were these panties
17 that she was wearing, a blue halter top, brassiere. She
18 also had on a short pair of jean shorts, which I'm trying
19 to find along the way. Your Honor, when I find them, I'll
20 -- I'll give them to you.

21 **THE COURT:** Very good.

22 **MR. JEPERTINGER:** She wasn't taking her clothes off
23 quickly enough. So he began taking them off her. Your
24 Honor, if you could see the force he used, the brassiere
25 is still latched together; but it is ripped. He ripped

1 the brassiere off of her. He forced her by gun point into
2 his brother -- brother's bedroom.

3 There he commenced, at first, to make her do oral sex
4 on him. In his -- In his words, he says, "I pushed her in
5 my brother's room and proceeded to make her have oral sex.
6 That was the only thing I -- I proceeded to do, is to make
7 her do that. 'Cause try -- 'Cause try to humiliate her.
8 Whatever. What I feel like if I did that, I probably -- I
9 might as well go the whole nine (9) yards."

10 And when he referred to "the whole nine (9) yards"
11 was meaning having sex. "I had sex with her after I had
12 oral sex with her."

13 And when the police asked him if he ejaculated inside
14 of her, he said, "Yes. Yes, sir."

15 Now, while this is going on, Your Honor, on the
16 brother's bed is an ashtray; and there's cigarettes in the
17 ashtray. And apparently, when they're on the bed, the
18 ashtray falls over and the ashes get in the victim's eyes.

19 And the victim says, "My eyes are burning. My eyes
20 are burning."

21 And he says, "Shut up, bitch," according to the
22 victim. And at that point, he strikes her with the gun,
23 basically cracking open her head.

24 I think I have a picture of -- of that, Your Honor,
25 which was -- would have been State's Exhibit 71.

1 Your Honor, at that point, after he gets done doing
2 that, he gets up off the ground; and he went into another
3 room. And there she is stark naked, and what -- her
4 opportunity to flee the scene.

5 She runs out of the house, naked, from 1410 Waverly
6 Avenue, slipping and falling; and there's gravel in the
7 front area of 1410 Waverly; and she skins her knees.
8 There's some bruising on her foot as she's running naked
9 on the gravel and falling on her elbows.

10 She gets across to 1411 Waverly Avenue, and she rings
11 the doorbell. And a -- a kind gentleman named Randall
12 Crawford opens the door at five (5) in the morning and
13 sees this naked woman, hysterical, out of her mind,
14 crying, saying she had just been raped by her brother.
15 They -- And the Crawfords, his mother, goes into one of
16 their bedrooms; and they -- and they -- they provide some
17 clothing for her to wear. And they called the police.

18 (While indicating) This is the clothing that the
19 Crawfords provided for her; and that's Exhibit 72 and 73,
20 Your Honor.

21 At that point, they called the police. By this time,
22 this man has -- has left the scene.

23 And, surprisingly, he says, after this whole
24 incident, that he went to a friend's house and sat there
25 until morning time, daybreak; and then he goes from

1 Waverly Avenue, from a friend's house, to 711 Oakland
2 Avenue, Apartment A, to his mother's house in North
3 Florence.

4 "But I proceeded to ask her fiance to take me to City
5 Complex, but he couldn't it. He had to go to work. So I
6 asked'ed my mother if she cooked breakfast. She said no.
7 So I said, well, can you cook breakfast? I'm going to the
8 Complex, and I'm coming back."

9 He -- He had -- He had breakfast after doing all of
10 this, Your Honor, as if it were a normal day.

11 And at that point, apparently, he went to the back --
12 back porch and thought about what he was going to do with
13 the gun he had. So he wound up going to the Woodmount
14 area here in Florence, and -- and he threw the gun into
15 the woods.

16 I spoke with Investigator Davis. He and other
17 officers tried to procure that gun, find that gun. They
18 weren't successful in locating the weapon, ever.

19 Your Honor, this young lady is in the courtroom
20 today. She was willing to testify against this half-
21 brother.

22 Thank the Lord, she had the baby that she was
23 pregnant with at the time in August of that year -- last
24 year, I should say.

25 And those were pretty much the facts and

1 circumstances surrounding this crime.

2 I will point out, Your Honor, when she did go to the
3 hospital, that I -- I can't -- From her estimation, he
4 came in the house at about twenty (20) to five (5). They
5 didn't call the police until about five (5:00) o'clock.
6 Your Honor, the rape probably was somewhere in the
7 duration of fifteen (15) to twenty (20) minutes. She was
8 so sore and it hurt her so much, they could not conduct a
9 rape kit test on her because of the pain she was in. It
10 -- It -- It caused her great pain to urinate.

11 And she had -- she's living with this -- with -- with
12 this event even to this day, Your Honor, as you can well
13 imagine.

14 I think that's all I have in terms of that case. And
15 I don't know if the victim would like to address The Court
16 at this time on that matter, and then we can proceed to
17 the last case.

18 **THE COURT:** Okay. I'll be glad to hear from the
19 victim at this time.

20 **MR. JEPERTINGER:** If you want to say anything, just
21 state---

22 **THE COURT:** Okay. Just state your full name, please
23 ma'am.

24 **VICTIM LAKIESHA JAMES:** Lakiesha---

25 **THE COURT:** It's not necessary that you say anything,

1 but you're certainly welcome to. Thank you, ma'am, for
2 being here.

3 VICTIM JAMES: I'm Lakiesha James.

4 MR. JEPERTINGER: Is there anything you want to say?

5 VICTIM JAMES: Only thing I wanted to know was -- I
6 mean -- I mean, did he -- he really have intentions on --
7 I mean, by us being brothers and sisters, did he really
8 have intentions on, I mean, killing me and hurting me like
9 that; and why he did it?

10 THE COURT: Thank you for being here.

11 VICTIM JAMES: Uh-huh.

12 MR. JEPERTINGER: Your Honor, the last case happened,
13 surprisingly, that -- that -- one (1) week exactly after
14 the first case. He was in possession of point-seven-nine
15 (.79) grams of crack cocaine that -- There was a drug
16 analysis done by SLED. Your Honor, at that time, they had
17 wanted that type thing because they knew who had done this
18 thing.

19 And Officer Daley with the Police Department received
20 a call in regards to a wanted subject walking on Commander
21 Street wearing a green coat. Central dispatch advised
22 that they had warrants on the subject. They had
23 headquarters check and see if they had warrants on the
24 subject, and they advised that they did.

25 Carpenter -- Patrolman Carpenter and Officer Daley

1 responded to the area and observed subject match- --
2 matching description of suspect. When they stopped their
3 patrol vehicle, subject looked down, covered his face with
4 his black hat. They got out of the vehicle and asked the
5 suspect what his name was, and he said Thomas Black.

6 Patrolman Carpenter observed subject drop a brown
7 colored medicine bottle with an unknown substance prior to
8 them getting out of the vehicle. They detained the
9 subject for identification. At that time, they arrested
10 him for the pending warrants. And when they checked the
11 brown medicine bottle, they discovered three (3) small,
12 white, rock-like substances believed to be crack cocaine.
13 And that's where that charge comes from, Your Honor.

14 In terms of a record, Your Honor, he has a
15 shoplifting conviction where he was sentenced to ninety-
16 three (93) days -- ninety-three (93) days in jail and
17 court costs back in 2000.

18 Your Honor, in 2002, he had a burglary, third, first
19 offense conviction where he was getting five (5) years
20 suspended to two (2) years probation.

21 He has a loitering conviction from 2002 as well. He
22 gave -- received thirty (30) days suspended to forty-eight
23 (48) hours and one (1) year of probation.

24 Your Honor, it looks like there might have been a
25 probation violation because it looks like he was received

1 into the Department of Corrections for that burglary
2 charge.

3 And then he had an unlawful carrying of a weapon
4 where he was sentenced to six (6) months of jail and court
5 costs; that was back on April 14th, 2005.

6 And that's it, Your Honor.

7 THE COURT: All right. Mr. McCall, you've heard
8 those -- that rendition of the facts. Are -- Are the
9 facts true and accurate?

10 DEFENDANT MCCALL: Yes, sir.

11 THE COURT: All right. Are you, in fact, guilty of
12 assault and battery of a high and aggravated nature?

13 DEFENDANT MCCALL: Yes, sir.

14 THE COURT: Are you, in fact, guilty of criminal
15 sexual conduct in the first degree?

16 DEFENDANT MCCALL: Yes, sir.

17 THE COURT: Are you guilty of possession of cocaine
18 base?

19 DEFENDANT MCCALL: Yes, sir.

20 THE COURT: I want to talk to you about each of these
21 offenses. First of all, I want to talk to you about
22 assault and battery of a high and aggravated nature. You
23 realize you could get up to ten (10) years for that, don't
24 you?

25 DEFENDANT MCCALL: Yes, sir.

1 **THE COURT:** And with regard to criminal sexual
2 conduct in the first degree, this is a special type crime
3 in that it's a violent crime; and it's a most serious
4 crime. And you're only entitled to two (2) most serious
5 crimes; and, thereafter, you'd be subjected to life in --
6 imprisonment. Do you understand that?

7 **DEFENDANT MCCALL:** Yes, sir.

8 **THE COURT:** Also the fact that it is a most serious
9 offense also puts it in a special category of cases where
10 there is no parole. Do you understand that?

11 **DEFENDANT MCCALL:** Yes, sir.

12 **THE COURT:** For purposes of this sentencing
13 procedure, you need to understand and grasp that you're
14 going to do every day for the time that I sentence you
15 with regard to criminal sexual conduct. Do you understand
16 that?

17 **DEFENDANT MCCALL:** Yes, sir.

18 **THE COURT:** It falls within the eighty-five (85%) per
19 cent rule, but for -- no one in this courtroom can say
20 with absolute certainty whether you would only have to
21 serve eighty-five (85%) per cent of it or not. That would
22 depend on future actions and how the Department of
23 Corrections handles that. So for purposes of this plea,
24 with regard to criminal sexual conduct, you need to
25 understand that you'll do day for day and there is no

1 parole. Do you understand that?

2 DEFENDANT MCCALL: Yes, sir.

3 THE COURT: All right. Do you also understand the
4 enhanced nature of a most serious offense and how you can
5 receive life imprisonment if you continue to accumulate
6 those?

7 DEFENDANT MCCALL: Yes, sir.

8 THE COURT: All right. With regard to possession of
9 cocaine base, probably the least of your concerns is that
10 you're going to loose your driver's license as a -- as a
11 result of that. Do you understand that?

12 DEFENDANT MCCALL: Yes, sir.

13 THE COURT: Do you know that, if you continue to mess
14 with dope in the future, penalties get worse with regard
15 to drug offenses? Do you understand that?

16 DEFENDANT MCCALL: Yes, sir.

17 THE COURT: All right. Do you realize that you could
18 get up to three (3) years for this particular offense?

19 DEFENDANT MCCALL: Yes, sir.

20 THE COURT: Do you still wish to plead guilty?

21 DEFENDANT MCCALL: Yes, sir.

22 THE COURT: Are you, indeed, guilty?

23 DEFENDANT MCCALL: Yes, sir.

24 THE COURT: All right. You are standing before me
25 pleading guilty, but one thing I want you to understand is

1 you don't have to plead guilty to anything in the United
2 States of America. You understand that, don't you?

3 DEFENDANT MCCALL: Yes, sir.

4 THE COURT: As a matter of fact, we have selected a
5 jury; and, if you would elect to go forward with that jury
6 trial process, we would begin that trial this afternoon.
7 They -- As a matter of fact, they're going to be reporting
8 back in in about ten (10) minutes. We would empanel the
9 jury; and I would charge them that, throughout the trial,
10 it's incumbent upon them to determine whether or not the
11 State can prove you guilty beyond a reasonable doubt. Do
12 you understand that?

13 DEFENDANT MCCALL: Yes, sir.

14 THE COURT: All right. In that trial, you could
15 exercise your right to remain silent. No one could
16 require that you take the witness stand. Do you
17 understand that?

18 DEFENDANT MCCALL: Yes, sir.

19 THE COURT: Mr. Jupertinger, in his case, couldn't
20 say, "Mr. McCall, I call you to the stand" and require
21 that you say anything. Do you understand that?

22 DEFENDANT MCCALL: Yes, sir.

23 THE COURT: All right. On the other hand, if you and
24 your lawyer, or particularly if you -- It's your decision,
25 your fundamental right, to take the stand if you want to.

1 You have an absolute right to take the stand and tell the
2 jury whatever you want to tell them if you want to. Do
3 you understand that, don't you?

4 DEFENDANT MCCALL: Yes, sir.

5 THE COURT: Do you know that your lawyer has the
6 right to subpoena witnesses; and, if -- even if witnesses
7 don't want to come to court, he can make them come to
8 court with the power of a subpoena. Do you understand
9 that?

10 DEFENDANT MCCALL: Yes, sir.

11 THE COURT: And he can issue the subpoena; if they
12 don't show up, I'll send the deputy to go get them. Do
13 you understand that?

14 DEFENDANT MCCALL: Yes, sir.

15 THE COURT: All right. And do you know that your
16 very capable lawyer would have the opportunity to cross-
17 examine the State's witnesses, point out the weaknesses in
18 their case. You'd have a chance to confront your accusers
19 and to eyeball them as they testified against you. Do you
20 understand that?

21 DEFENDANT MCCALL: Yes, sir.

22 THE COURT: Do you realize that by pleading guilty
23 you're giving up all these rights?

24 DEFENDANT MCCALL: Yes, sir.

25 THE COURT: Do you know that, in this case, there is

1 a statement that -- that was taken from you; and there's
2 been discussion with counsel about that. And you'd be
3 entitled to a hearing to determine whether or not that --
4 that statement would be suppressed. Do you understand
5 that?

6 DEFENDANT MCCALL: Yes, sir.

7 THE COURT: And do you realize that by pleading
8 guilty, you're giving up that right as well?

9 DEFENDANT MCCALL: Yes, sir.

10 THE COURT: All right. Plea negotiations are none.
11 Pleading straight up with a recommendation of consecutive
12 times; is that correct, Mr. Jepertinger?

13 MR. JEPERTINGER: Yes, sir.

14 THE COURT: Is that your understanding, Mr. Floyd?

15 MR. FLOYD: Yes, sir, Your Honor.

16 THE COURT: Is that your understanding, Mr. Thomas?

17 DEFENDANT MCCALL: Yes, sir.

18 THE COURT: All right. Tell me about your lawyer,
19 Mr. Thomas. Are you satisfied with your lawyer?

20 DEFENDANT MCCALL: Yes, sir.

21 THE COURT: Has he done everything that you've asked
22 him to do?

23 DEFENDANT MCCALL: Yes, sir.

24 THE COURT: Has he not done anything that you've
25 asked him to do?

1 DEFENDANT MCCALL: No, sir.

2 THE COURT: Have you understood all your
3 conversations with him?

4 DEFENDANT MCCALL: Yes, sir.

5 THE COURT: Do you need any additional time to talk
6 to him?

7 DEFENDANT MCCALL: No, sir.

8 THE COURT: Any complaints with him whatsoever?

9 DEFENDANT MCCALL: No, sir.

10 THE COURT: All right. Let's ask about your decision
11 to plead guilty here. Has anyone promised you anything,
12 threatened you, pressured you, mistreated you in any way,
13 shape, or form in an effort to get you to plead guilty
14 here today?

15 DEFENDANT MCCALL: No, sir.

16 THE COURT: All right. It's been your decision to
17 plead guilty?

18 DEFENDANT MCCALL: Yes, sir.

19 THE COURT: On each of these offenses?

20 DEFENDANT MCCALL: Yes, sir.

21 THE COURT: Are you, indeed, guilty?

22 DEFENDANT MCCALL: Yes, sir.

23 THE COURT: It's been your decision to plead guilty?

24 DEFENDANT MCCALL: Yes, sir.

25 THE COURT: All right. Have you understood all my

1 questions?

2 DEFENDANT MCCALL: Yes, sir.

3 THE COURT: Have your answers been truthful?

4 DEFENDANT MCCALL: Yes, sir.

5 THE COURT: You understand you have ten (10) days to
6 appeal any decision I might render here today?

7 DEFENDANT COURT: Yes, sir.

8 THE COURT: All right. Mr. Thomas, based on your
9 testimony here today, I find that there is, indeed, a
10 substantial factual basis for your plea, that your
11 decision was freely and voluntarily entered into,
12 knowingly and intelligently, with consent of competent
13 counsel with whom you say you are satisfied. I'll accept
14 your plea and be glad to hear from you and your lawyer and
15 anyone on your behalf. Mr. Floyd?

16 MR. FLOYD: Thank you, Your Honor. Your Honor,
17 obviously, this is a -- a heartbreaking circumstance that
18 we're up here for today. Mr. McCall has expressed remorse
19 for what happened.

20 Your Honor, he -- in my conversations with him, he's
21 always been a very, you know, pleasant person, very -- He
22 listens when I -- when I speak to him. Your Honor, he's
23 been very cooperative.

24 He apparently -- You know, I -- I don't know what,
25 you know, happened that night to him on the inside; but he

1 did tell me, you know, of his -- his drug usage; and I --
2 I don't think it was just that night or that day. And I
3 -- I think -- I think that probably affected his actions
4 that night from -- to a -- to a great degree.

5 Your Honor, he just asks for you to be as merciful as
6 possible. Thank you.

7 **THE COURT:** Mr. Thomas, it's not necessary that you
8 take -- that you say anything; however, if you would like
9 to speak, I'll be glad to hear from you.

10 **DEFENDANT MCCALL:** I have nothing to say, sir.

11 **THE COURT:** Okay.

12 (Pause.)

13 **THE COURT:** How much time has Mr. Thomas spent in
14 jail?

15 **MR. JEPERTINGER:** Your Honor, they arrested him on
16 the last charge on March the 21st, Your Honor. And then
17 they gave him the warrant on March the 22nd, Your Honor,
18 for the -- for the -- the crack charge. But he was
19 arrested on March the 21st and has been in there
20 continuously.

21 **THE COURT:** Can you assist me, Miss Nicole, in
22 calculation of the dates?

23 **MR. JEPERTINGER:** March 21st.

24 **DEPUTY CLERK NICOLE BETHEA:** Three hundred and
25 fifteen (315) days?

1 THE COURT: Three hundred and fifteen (315) days?

2 DEPUTY CLERK BETHEA: Yes, sir.

3 (Pause.)

4 THE COURT: All right. Mr. McCall, on indictment
5 2006-GS-21-868, on the offense of criminal sexual conduct
6 in the first degree, the sentence of The Court is you'll
7 be committed to the State Department of Corrections for a
8 period of twenty (20) years. This sentence is to run
9 consecutive with indictment 2006-GS-21-869 and concurrent
10 with indictment 2006-GS-21-867.

11 With regard to indictment 2006-GS-21-869, on the
12 offense of assault and battery of a high and aggravated
13 nature, the sentence of The Court is you be committed to
14 the State Department of Corrections for a period of five
15 (5) years. This sentence is to run consecutive with
16 indictment 2006-GS-21-868, and concurrent with indictment
17 2006-GS-21-867.

18 With regard to indictment 2006-GS-21-867, possession
19 of cocaine base, the sentence of The Court is you be
20 committed to the State Department of Corrections for a
21 period of three (3) years. This sentence is to run
22 concurrent in all respects with other sentences rendered
23 here today.

24 On each of these offenses, you're given credit for
25 three hundred and fifteen (315) days time that you've

1 already served. Good luck to you.

2 MR. FLOYD: Thank you, Your Honor.

3 MR. JEPERTINGER: Thank you, Your Honor.

4

5 (WHEREUPON, at 3:00 p.m., this matter was concluded.)

6

7 *****END OF REQUESTED TRANSCRIPT OF RECORD*****

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) CERTIFICATE

I, the undersigned Patricia A. McDaniel, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the guilty plea of captioned case, relative to appeal, in the Criminal Court of Florence County, South Carolina, on the 29th day of January, 2007.

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

Patricia A. McDaniel

Court Reporter

Florence, South Carolina
September 10, 2007.

WITNESSES

J. JAMES RODGERS

FPD

Dailey

PROS:

JCJ

D/O:

03-21-2006

ARREST WARRANT NO.

1304642 (1)

ACTION OF GRAND JURY

TRUE BILL

L. Coleman
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2006 - GS - 21 - 00867

The State of South Carolina,

County of FLORENCE

JCJ

COURT OF GENERAL SESSIONS

JUNE

TERM

2006

THE STATE

vs.

THOMAS MCCALL, JR.

Indictment for

POSSESSION OF COCAINE BASE

CERTIFIED: A TRUE COPY
Crista Spivey
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
CORRIG R. BELL
CLERK OF COURT
COURT HOUSE
FLORENCE COUNTY, S.C.

2006 JUN - 8 P 1:44

FILED

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

POSSESSION OF COCAINE BASE

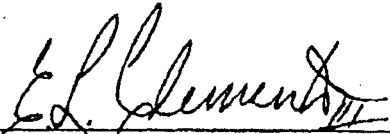
~~At a Court of General Sessions, convened on JUNE 8, 2006, the Grand Jurors of FLORENCE~~

County present upon their oath:

COUNT ONE - POSSESSION OF COCAINE BASE

That THOMAS MCCALL, JR. did in FLORENCE County on or about March 21, 2006, violate Section 44-53-375(A) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess a quantity of Cocaine Base a controlled substance; such possession not having been authorized by law.

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



SOLICITOR

WITNESSES

T. JAMES RODGERS

FPD

Davis

PROS:

JCJ

D/O:

03-14-2006

ARREST WARRANT NO.

1304605 (1)

ACTION OF GRAND JURY

TRUE BILL

A. Coleman

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2006 - GS - 21 - 00868

The State of South Carolina,

County of FLORENCE

JCJ

COURT OF GENERAL SESSIONS

JUNE

TERM

2006

THE STATE

vs.

THOMAS MCCALL, JR.

Indictment for

CRIMINAL SEXUAL CONDUCT

(FIRST DEGREE)

FILED
2006 JUN - 8 P 1:44
CORRECTOR R. BELL
CLERK
CITY

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

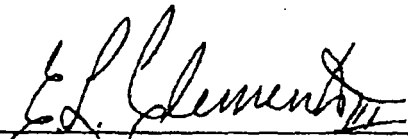
At a Court of General Sessions, convened on JUNE 8, 2006, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT (FIRST DEGREE)

That THOMAS MCCALL, JR. did in FLORENCE County on or about March 14, 2006, violate Section 16-03-0652 of the Code of Laws of South Carolina (1976), as amended, in that he did commit, or attempt to commit, a sexual battery in and upon Lakeshia James by using aggravated force and/or coercion upon Lakeshia James by holding a gun to her head and threatening to kill her and vaginally penetrating her and making her perform fellatio on him.

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



SOLICITOR

WITNESSES

LT. JAMES RODGERS FPD

Bellamy

PROS: JCJ

D/O: 03-13-2006

ARREST WARRANT NO.

1304602 (1), 1304603 (1).

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2006 - GS - 21 - 00869

The State of South Carolina,

County of FLORENCE

JCJ

COURT OF GENERAL SESSIONS

JUNE TERM 2006

THE STATE

vs.

MAURICE MCCALL

THOMAS MCCALL, JR.

Indictment for

ASSAULT AND BATTERY HIGH AND
AGGRAVATED NATURE

CERTIFIED: A TRUE COPY
Cornie R. Bell
CLERK OF COURT C.P & G.S
FLORENCE COUNTY, S.C.

FILED
CORNIE R. BELL
CLERK OF COURT
2006 JUN - 8 P. 1:45
FLORENCE COUNTY, S.C.

ARREST WARRANT

I-304605

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

THE STATE
 against

THOMAS MCCALL JR.
 Address: WAVERLY AVE.
FLORENCE SC 29501

Sex: Race: B Height: 6-0 Weight: 150
 DL State: DL#: SSN:
 DOB: 09/09/1983 Agency OR#: SC0210100

Prosecuting Agency: FPD
 Prosecuting Officer: DAVIS
 Offense: CRIMINAL SEXUAL CONDUCT - 1ST
DEGREE Offense Code: 0160
 Code/Ordinance Sec. 16-03-0652

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____

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

 Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
 defendant THOMAS MCCALL JR.
 on 3-21-06

 Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

**ORIGINAL
 MUST BE RETURNED TO
 FLORENCE MUNICIPAL COURT**

3-22-06

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

AFFIDAVIT

Personally appeared before me the affiant LEE DAVIS who
 being duly sworn deposes and says that defendant THOMAS MCCALL JR.
 did within this county and state on 03/14/2006 violate the criminal laws of the
 State of South Carolina (or ordinance of County/ Municipality of FLORENCE)
 in the following particulars:
DESCRIPTION OF OFFENSE: 16-03-0652 / 0160/CRIMINAL SEXUAL CONDUCT - 1ST DEGREE

Form Approved by
 S.C. Attorney General
 July 20, 1990
 SCA 518

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

THE DEFENDANT, WHO IS THE VICTIM'S BROTHER, USED A KEY TO ENTER THE RESIDENCE AT 1410 WAVERLY ST. IN THE
 CITY OF FLORENCE. THE DEFENDANT, WHO WAS ARMED WITH A BLACK SEMI AUTOMATIC HANDGUN, DEMANDED THAT
 THE VICTIM STRIP HER CLOTHING AND GET ON THE BED. THE DEF. HELD A GUN TO THE VICTIM'S HEAD AND FORCED
 HER TO PERFORM ORAL SEX. THE VICTIM BEGGED THE DEF. TO STOP. THE DEF. THEN HELD THE GUN AT THE VICTIM'S
 HEAD AGAIN AND STATED "DO WHAT I SAY OR I WILL KILL YOU." THE DEF. FORCEFULLY PENETRATED THE VICTIM'S
 VAGINA UNTIL HE EJACULATED INSIDE OF HER. AFTERWARDS, THE DEF. WENT TO THE BATHROOM AND WASHED
 HIMSELF UP. THE VICTIM USED THIS OPPORTUNITY TO ESCAPE TO A NEIGHBOR'S RESIDENCE FOR HELP. THE VICTIM,
 WHO IS PREGNANT, FELL DOWN TWICE SCARING HER ARMS AND LEGS. THE AFFIANT OBSERVED THE INJURIES ON THE
 VICTIM. THE VICTIM WAS TRANSPORTED TO MCLEOD HOSPITAL FOR TREATMENT.

Signature of Affiant: _____

Affiant's Address: FLORENCE POLICE DEPT., 180 N. IRBY
FLORENCE SC 29501
 Affiant's Telephone: 843-665-3191

STATE OF SOUTH CAROLINA
 County/ Municipality of
FLORENCE

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 03/14/2006 defendant THOMAS MCCALL JR.
 did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of FLORENCE) as set forth below:
DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT - 1ST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and authorized to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
 to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
 on 03/14/2006)
 _____ (L.S.))
 Signature of Issuing Judge

Judge's Address: BOX DD-CITY-COUNTY COMPLEX, ROOM 506
FLORENCE SC 29501
 Judge's Telephone: 843-665-3148

Judge Code: JUDGE Issuing Court: Magistrate Municipal Circuit

ORIGINAL

Case: 2006-002460

FILED
 APR 10 9 53
 CONNIE R. B...
 CLERK
 FLORENCE SC

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

ASSAULT AND BATTERY HIGH AND AGGRAVATED
 NATURE

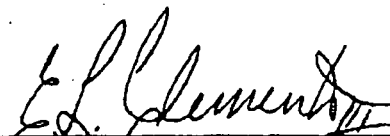
At a Court of General Sessions, convened on JUNE 8, 2006, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE

That MAURICE MCCALL AND THOMAS MCCALL, JR. did in FLORENCE County on or about March 13, 2006, violate Common Law and Section 17-25-0030 of the Code of Laws of South Carolina (1976), as amended, in that they did commit an assault and battery upon one Lakeshia James constituting an unlawful act of violent injury to the person of the said Lakeshia James accompanied by circumstances of aggravation, to-wit: in that they did beat her and kicked her in the abdomen all while she was pregnant.

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 COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2009-CP-21-1083
)	
Thomas McCall, Jr., SCDC No 286886,)	
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 16, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Applicant was indicted at the June 2006 term of the Florence County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2006-GS-21-869), criminal sexual conduct, first degree (2006-GS-21-868), and possession of cocaine base (2006-GS-21-867). He was represented by Scott P. Floyd, Esquire. On January 29, 2007, the Applicant pled guilty as indicted. He was sentenced by the Honorable Michael G. Nettles to five (5) years imprisonment for ABHAN, to three (3) years, concurrent, for possession of cocaine base, and to twenty (20) years, consecutive, for criminal sexual conduct.

STATE OF SOUTH CAROLINA)
 COUNTY OF Florence)
 STATE VS.)
Thomas Allen McCall, Jr.)
 AKA:)
 Race: B Sex: M Age: 22)
 DOB: 9/9/83 SS#:)
 Address: 10 W. 14th Ave)
 City, State, Zip: Florence SC 29501)
 DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 06 -GS- 21 - 867
 A/W#: 1-304692
 Date of Offense: 2/21/06
 S.C. Code §: 44-53-375(A)
 CDR Code #: 3 1 0 1 0 1 9
 CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession of Cocaine Base (1st) (3ggs/5,000) in violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3 1 0 1 0 1 9
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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

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: 1-29-07
 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. 315 days

SPECIAL CONDITIONS:

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

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

Recipient: _____
 *Fine: \$ _____

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$ 00.00
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 16.75
TOTAL		\$ 231.75

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

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

PRESIDING JUDGE [Signature]
 Judge Code: _____
 Sentence Date: 1/25/07

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Scott, P, Floyd - 207-A John St, Lake City S.C 29560
- ii. Eleanor Duffy Cleary, 1330 Lady St suite 401 Columb
- iii. S.C 29201

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

- i. Plea arraignment
- ii. appeal
- iii. _____

2009 JUN 16 PM 12:00
CLERK OF COURT
FLORENCE COUNTY, SC

18. State clearly the relief you seek in filing this application.

For guilty pleas to be vacated and start over

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

N/A

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE
STATE VS.

Thomas McCall, Jr

06 INDICTMENT/CASE# 11-868
GS-11-868
AW#: 1-304605
Date of Offense: 3/14/06
S.C. Code §: 16-3-652
CDR Code #: 0 1 1 6 1 0

AKA:
Race: B Sex: M Age: 72
DOB: 9/9/83 SS#:
Address: Waverly Ave.
City, State, Zip: Florence SC 29501
DL# SID#

CASE RESTORED
 SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Criminal Sexual Conduct 1st Degree (up to 30 yrs)
in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 6 1 0
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State. *Consecutive*
ATTORNEYS: John C. Gent (Attorney for Plaintiff), Thomas McCall (Defendant), Scott P. [Name] (Attorney for Defendant)

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 _____ 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 06-15-21-869 concurrent on 6-15-21-8
 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. 31.5 days

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: set by SCDPPPS
Recipient: _____
*Fines:
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 3.25 \$ _____
TOTAL \$ 128.75

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 \$ TBA beginning 30 APR
\$ _____ paid to Public Defender Fund
Other: _____

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

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

PRESIDING JUDGE: [Signature]
Judge Code: _____
Sentence Date: 1/29/07

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE
STATE VS.
Thomas Allen McGill Jr
AKA:
Race: IS Sex: M Age: 29
DOB: 9-9-83
Address:
City, State, Zip: Florence SC 29501
DL# SID#

INDICTMENT/CASE#: 06 GS- 21 869
AW#: 304603
Date of Offense: 3/13/04
S.C. Code §:
CDR Code #: 0 1 0 1 1 1 3
CASE RESTORED SENTENCE
PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: ABHAN (104.3)
in violation of § 17-15-30 of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 1 3
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

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

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: 6-25-01-868 concurrent on 6-25-21-867
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. 315 days

SPECIAL CONDITIONS:
PTUP days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 125 beginning 6-25-07
\$ paid to Public Defender Fund
Other:
Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

RESTITUTION: Heard, Waived, Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
set by SCDPPPS
Recipient:
*Fine:
\$14-1-206 (Assessments 107.5%)
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 10000
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
§ 35.13 (Public Def/Prob) \$500 \$
§73.3, 1B-TP (Law Enforce. Funding) \$25 \$ 2500
§33.7, 1B TP (Drug Court Surcharge) \$100 \$
§50-21-114(BUI Breath Test Fee) \$50 \$
§56-5-2942(J), (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 375
TOTAL \$ 12875

PRESIDING JUDGE [Signature]
Judge Code:
Sentence Date: 1/29/07

MCCALL, THOMAS - FBI # 384194PB1 SID# SC01332755 SCDC # 286886 (CONTINUED)
LVL 2 - FULL TIME(NO EWC) 06/10/03 7/ 1/ 3 RELEASED/PAROLED
LVL 2 - FULL TIME(NO EWC) 10/18/02 6/ 9/ 3 INSTIT TRANSFER
LVL 3 - FULL TIME(NO EWC) 10/11/02 10/17/ 2 MI ELIGIBLE FOR LEVEL 2
***** END OF REPORT *****

2009 CP 21 1083

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Florence)

Thomas McCall-286886)

Full name and prison number, if any, of applicant.)

v.)

The state)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2009 JUN 16 PM 12:34
JUDGE FRED SHEARER
CLERK OF COURT P & G S
FLORENCE COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

If the applicant 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 applicant was convicted.

1. Place of detention Lee CI 990 wisacky way

Bishopville SC 29010

2. Name and location of Court which imposed sentence Florence County Complex,

Florence, County

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

06(a) 65-21-867

(b) 06-65-11-868

(c) 06-65-21-869

4. The date upon which sentence was imposed and the terms of the sentence:

(a) January-29-2007-20 years

(b) January-29-2007-3 years

(c) January-29-2007-5 years

CERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, S.C.

2009 CP 21 1083

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2009 JUN 16 PM 12:34
COURT CLERK - SHERIFF
CCCP & SS
FLORENCE COUNTY, SC

5. 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 _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes
7. If you answered "yes" to (6), list
 - (a) the name of each Court to which you appealed:
 - i. S.C. Ct. of Apps
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Dismissal Judgement
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. June, 5, 2009
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
 - (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Prosecutor misconduct
 - (b) Ineffective assistance of Counsel
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) making untrue statements in open court and under oath, and using, use of force, a compulsion
- (b) For advising me to do something I did not want to do and that's plea and for not solving the solicitor for making
- (c) untrue statements

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) _____
- (d) any other petitions, motions or applications in this or any other Court?
ct of Apps

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 JONNE BEL-SHEARIN
 CLERK OF COURT
 FLORENCE COUNTY, SC

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. ct of Apps
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. June 5 2009 Dismissal order
 - ii. _____
 - iii. _____
 - iv. _____

20 09 CP 21 1083

(d) the date of each such disposition:

- i. Jan 5, 2009
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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 WINNIE PEARL SHEARIN
 & ASSOCIATES
 FLORENCE COUNTY SC

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

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

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

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

2009 CP 21 1083

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Scott, P, Floyd - 207-A John St, Lake City S.C 29560
- ii. Eleanor Duffy Cleary, 1330 Lady St suite 401 Columbia
- iii. S.C 29201

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

- i. Plea arraignment
- ii. appeal
- iii. _____

2009 JUN 16 PM 12:34
 COMM-FEL-SPR/ARIN
 CLERK OF COURT
 FLORENCE COUNTY, SC

18. State clearly the relief you seek in filing this application.

For guilty pleas to be vacated and start over

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

N/A

20 09 CP 21 1083

STATE OF SOUTH CAROLINA)
)
COUNTY OF Florence) VERIFICATION

I, Thomas McCall, 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.

Thomas McCall

FILED
2009 JUN 16 PM 12:34
COMMISSIONER
C.C. CP & GS
FLORENCE COUNTY, SC

Sworn to and subscribed before me
This 12 day of June, 2009.

Debra Sims L.S.

Notary Public for South Carolina
My Commission Expires 11-4-2015

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

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

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

Thomas McCall
Applicant

Sworn to and subscribed before me
This 12 day of June, 2009.

Debra Sims L.S.

Notary Public for South Carolina
My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2009-CP-21-1083
)	
Thomas McCall, Jr., SCDC No 286886,)	
)	
Applicant.)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 16, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Applicant was indicted at the June 2006 term of the Florence County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2006-GS-21-869), criminal sexual conduct, first degree (2006-GS-21-868), and possession of cocaine base (2006-GS-21-867). He was represented by Scott P. Floyd, Esquire. On January 29, 2007, the Applicant pled guilty as indicted. He was sentenced by the Honorable Michael G. Nettles to five (5) years imprisonment for ABHAN, to three (3) years, concurrent, for possession of cocaine base, and to twenty (20) years, consecutive, for criminal sexual conduct.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. McCall, 2009-UP-273, filed June 2, 2009. The remittitur was issued on June 18, 2009.

The Applicant filed his first PCR application on November 13, 2008. (2008-CP-21-2162). However, his direct appeal was still pending and his first PCR application was dismissed without prejudice pursuant to Rule 71.1(b), SCRPC. The Honorable Thomas A. Russo signed the Order of dismissal February 13, 2009.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the brief and the opinion from the direct appeal, and the PCR application. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Prosecutor misconduct";
2. Ineffective assistance of counsel.

III.

The Respondent submits that the Applicant's allegation that he received ineffective assistance

1. Anders v. California, 386 U.S. 738 (1967).

of counsel is without merit. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in his application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, supra.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, supra. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the

Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent submits that the allegation of prosecutorial misconduct is not cognizable in PCR. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial** or on **appeal**. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. The failure to do so has waived these allegations as grounds for relief. Therefore, the Respondent submits that these allegations should be summarily dismissed.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

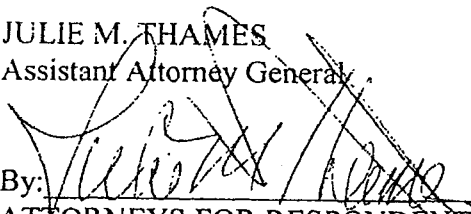
Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

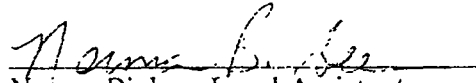
3/25, 2010.

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	
)	
	)	2009-CP-21-1083
)	
THOMAS MCCALL, JR., #286886)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

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

Charles T. Brooks, III
P.O. Box 291226
Columbia, SC 29229

DATED this 25th day of March, 2010.



Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

COURT OF COMMON PLEAS

THOMAS MCCALL)
286886)

PETITIONER,)
v.)

STATE OF SOUTH CAROLINA)
RESPONDENT.)

TRANSCRIPT OF RECORD
09-CP-21-1083
July 13, 2010
Florence, South Carolina

BEFORE:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

APPEARANCES:

CHARLES T. BROOKS, III, ESQ.
Attorney for Petitioner

DAVID A. SPENCER, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

I N D E X

	Page
Thomas McCall:	
Direct examination by Mr. Brooks	5
Cross-examination by Mr. Spencer	10
Redirect examination by Mr. Brooks	17
Scott Floyd:	
Direct examination by Mr. Brooks	18
Cross-examination by Mr. Spencer	21
Ruling of the Court	24

(There were no exhibits submitted.)

1 MR. SPENCER: If I looked at this right this is
2 the last case today. This is Thomas McCall versus State,
3 2009-CP-21-1083. Your Honor, this stems from an
4 application filed by Mr. McCall on July 16th of 2009. He
5 was indicted in the June 2006 term by the Florence County
6 grand jury for assault and battery of a high and
7 aggravated nature, criminal sexual conduct in the first
8 degree, and possession of cocaine base. He was
9 represented by Mr. Floyd. He pled guilty on January 29th
10 of 2007, pled guilty as indicted. He was sentenced by
11 Judge Nettles to five years imprisonment for ABHAN, three
12 years concurrent for possession of cocaine base, and then
13 20 years consecutive for criminal sexual conduct so he got
14 a aggregate sentence of 25 years. And Your Honor, I would
15 just -- and actually, there was a notice of appeal from
16 this matter. The notice of appeal was filed and an Anders
17 brief was submitted and case was dismissed. The appeal
18 was dismissed and the remittitur was issued in 2009. Your
19 Honor, I have the judge's packet here for this case.

20 Your Honor, I would just ask at this time --
21 he's represented by Mr. Brooks. For the record my name is
22 David Spencer; I haven't put that in yet. But I would
23 just ask that Mr. Brooks state the allegation which
24 Mr. McCall is proceeding on today.

25 MR. BROOKS: Before we get to that, Judge, we

1 have a motion to make. My client, our position is that he
2 would like to have this matter continued. The reason I
3 cite this is, we had had a prior order giving us access to
4 an investigator who had started doing some work on the
5 matter. Of course, as Your Honor might be aware, about I
6 want to say a week or so ago, got a note from Indigent
7 Defense. They had no money to pay any expenses such as
8 investigators and experts and things of that nature on
9 civil matters such as PCRs. And as it relates to that
10 I've informed my client that obviously Mr. Glen Harrell
11 who is an investigator in Sumter working the case,
12 obviously realized he's no longer going to get paid, he
13 ceased working and obviously that would impact being able
14 to subpoena witnesses. While we could subpoena them on
15 civil case we would have no funds to pay for service of
16 process or pay him to go serve them and those various
17 things. So that's one of the reasons why my client says,
18 hey, you know, knowing that Mr. Brooks, I would like to
19 ask the Court for a continuance so and I told him I would
20 present that to the Court.

21 THE COURT: Mr. Spencer.

22 MR. SPENCER: Your Honor, I oppose continuance.
23 I don't -- you know, this is, comes from a guilty plea. I
24 don't think there's probably a need for an investigator
25 anyhow, but I would oppose the continuance.

PW- T. MCCALL - DIRECT

1 THE COURT: I'm gonna deny it. It is a guilty
2 plea anyway; it wasn't a trial. All right, I'm ready when
3 you are.

4 MR. BROOKS: All right, ready? We call Mr.
5 McCall to the stand, Judge. And while he's doing that, to
6 answer Mr. Spencer's question, basically involuntarily
7 guilty plea, coerced plea, things in his application he's
8 talking about untrue statements made. Those are the
9 things that we're going on.

10 WHEREUPON,

11 **THOMAS MCCALL,**

12 having been duly sworn by the Deputy Clerk of Court,
13 testified as follows:

14 THE DEPUTY CLERK OF COURT: Please be seated,
15 then state your name for the record.

16 THE WITNESS: Thomas McCall, T-H-O-M-A-S
17 M-C-C-A-L-L.

18 MR. BROOKS: Ready, Judge?

19 THE COURT: Sure.

20 **DIRECT EXAMINATION**

21 BY MR. BROOKS:

22 Q Mr. McCall, you were represented in this matter by
23 Mr. Floyd?

24 A Right.

25 Q And he was court appointed to represent you; is that

PW- T. MCCALL - DIRECT

1 correct?

2 A Correct.

3 Q And as it turns out it ended up being disposed of by
4 guilty plea; is that correct?

5 A Correct.

6 Q Now you brought this application wanting a new trial;
7 is that correct?

8 A Correct.

9 Q Now you and I, we sat down and did the calculation of
10 what you could get; isn't that correct?

11 A Correct.

12 Q And knowing that it was about 43 years?

13 A Correct.

14 Q Knowing that and knowing the risk that you run, you
15 still want to go forward; is that correct?

16 A Correct.

17 Q Okay. Now in regards to Mr. Floyd's representation was
18 it your intent to go to trial?

19 A Yes.

20 Q How did it turn about and become a guilty plea?

21 A 'Cause the day of the trial I spoke with Scott Floyd.
22 He told me that he feel like I should plead. I asked him
23 why because previously before that he came out to the
24 department in the detention center and told me that we
25 could win because it was nothing but hearsay on my case.

PW- T. MCCALL - DIRECT

1 So the day of the trial he came to a change of mind so I
2 figured why you change your mind day of trial. That got
3 me scared, not wanting to go to trial, with the guy that
4 saying that he's not going -- pretty much say we're gonna
5 lose. I mean, that's what I'm saying.

6 Q And so did you feel like you were coerced into pleading
7 guilty?

8 A I was.

9 Q And was there anything else that you wanted Mr. Floyd
10 to do that he didn't do?

11 A Like, subpoena witnesses. If he told me that it wasn't
12 make no sense to subpoena these witnesses 'cause they
13 couldn't change the outcome of my trial or whatnot. I had
14 some -- these are the major part of my defense 'cause I
15 need these people 'cause what they saying I did, I did not
16 do from point A to point B. And I told Scott Floyd I
17 wanted to go to trial ever since he was appointed to my
18 case.

19 Q And were these alibi witnesses?

20 A No. They was witnesses stating that these allegations
21 didn't happen 'cause they was there during the so-called

22 —

23 Q During the event?

24 A Yeah.

25 Q Okay.

PW- T. MCCALL - DIRECT

1 MR. SPENCER: Your Honor, I'm sorry, I didn't
2 hear that last answer.

3 MR. BROOKS: I said during the event, and he said
4 yeah. I asked him ---

5 MR. SPENCER: Material witnesses to the event?

6 MR. BROOKS: I asked him were these alibi
7 witnesses, and he said, no, these were witnesses who were
8 there. And I said to the event, and he said yes.

9 MR. SPENCER: Okay, thank you, I apologize.

10 THE COURT: That's fine. If you would speak into
11 that microphone.

12 BY MR. BROOKS:

13 Q All right. Now Mr. McCall, did you -- who were these
14 witnesses?

15 A My brother, and about three of my friends.

16 Q And you recall their names?

17 A Andrell Black, Cedric Gregg, I forgot the other two. I
18 don't -- I know their street -- I don't know their
19 government (ph) name.

20 Q And you gave these names -- did you have the addresses?

21 A Then, yes.

22 Q And you gave them to ---

23 A Scott Floyd.

24 Q ---Mr. Floyd? Okay. And to your knowledge did he ever
25 place them under subpoena?

PW- T. MCCALL - DIRECT

1 A Never. He never.

2 Q Okay.

3 A And on the day of the trial I told him I didn't want to
4 plead. So he told me if I do plead I'm gonna have to say
5 certain things because in order for the judge to accept my
6 plea I have to say yeah, I'm guilty, yeah, he was -- he
7 did everything that the lawyer supposed to do and such
8 have you.

9 Q So you're saying he gave you a complete script of what
10 to say?

11 A What I should say, basically saying yeah because that's
12 the only way that they will accept my plea. Without that
13 if I say, no, I'm not guilty, they would not accept my
14 plea. And on top of that, before that he told me -- it
15 was him, John Jepetino (sic), the judge had it off the
16 record saying I plead to the charges he would have gave me
17 20 years and ran everything concurrent. This is off the
18 record.

19 Q Okay. And that's some of the plea negotiations---

20 A Right.

21 Q ---that you're referring to; is that correct?

22 A Correct.

23 Q Okay. Now is there anything else you want to tell the
24 Court about Mr. Floyd's representation that you haven't
25 covered?

PW - T. MCCALL - CROSS

1 A That what I think of right now.

2 Q You sure? Anything else?

3 A Positive.

4 Q All right. Answer any questions by Mr. Spencer.

5 **CROSS - EXAMINATION**

6 BY MR. SPENCER:

7 Q Now Mr. McCall, you were charged with three things.

8 You were charged with assault and battery of a high and
9 aggravated nature, right?

10 A Correct.

11 Q And then CSC?

12 A Correct.

13 Q And then the separate drug charge?

14 A Correct.

15 Q And these were for three different instants, right?

16 A Correct.

17 Q And so, when you mentioned some witnesses to the event
18 were they witnesses to the assault and battery charge?

19 A Yeah, and CSC.

20 Q They were there for the -- they were there when the CSC
21 took place?

22 A Yeah, I had gotten drop off, one. I ain't been in but
23 five minutes. We was in the yard.

24 Q Who are these people again?

25 A My brother and three more friends.

PW - T. MCCALL - CROSS

1 Q Three of your friends. And they were there to -- well,
2 let me back up. What's your defense to the -- the defense
3 you would have made to the criminal sexual conduct charge?

4 A To my -- if I went to trial and it came ---

5 Q Right, what was your defense though? What happened?

6 A What happened that night?

7 Q Did you rape your sister?

8 A No.

9 Q What happened?

10 A I wasn't there.

11 Q You weren't there? Okay.

12 A Not supposed to happen. It didn't happen. None of
13 that didn't happen.

14 Q So you're saying that they would have been alibi
15 witnesses for that?

16 A Okay, yeah, I'm saying that.

17 Q Okay. Now wasn't your brother a co-defendant on the
18 assault and battery charge too?

19 A That was Marcus McCall.

20 Q Okay.

21 A He was a witness too.

22 MR. SPENCER: Beg the Court's indulgence.

23 THE COURT: Sure.

24 BY MR. SPENCER:

25 Q Now I want to talk about the day you pled guilty. At

PW - T. MCCALL - CROSS

1 what point did you tell Judge Nettles that you didn't want
2 to plead guilty?

3 A At one point in time I didn't.

4 Q At what point did you tell Judge Nettles that you were
5 unhappy with your attorney?

6 A I didn't because I -- the reason I didn't, what I said
7 earlier, because I was told that if I did do that he would
8 not accept my plea.

9 Q So you're saying that Mr. Floyd told you to lie?

10 A Pretty much, yes.

11 Q And that what you did was you were lying to Judge
12 Nettles?

13 A Yes.

14 Q Okay, do you recall -- let me go ahead and give you
15 this transcript. Page -- and I have it opened, Page 23.
16 And you can just follow along. I'm just gonna read it out
17 loud.

18 A Okay.

19 Q On Page 23 starting with line 16. This is Judge
20 Nettles: "All right, it's been your decision to plead
21 guilty." And would you agree with me that you told him
22 yes?

23 A Yes, sir.

24 Q Would you agree with me that it was your decision to
25 plead guilty that day?

PW - T. MCCALL - CROSS

- 1 A No, I did not agree.
- 2 Q Do you see on line 21 where the judge asked you if you
3 were indeed guilty?
- 4 A Yes, sir.
- 5 Q And you see that your answer is yes, sir?
- 6 A Yes, sir.
- 7 Q So what you're saying today to before Judge Seals is
8 that you were lying to Judge Nettles?
- 9 A Yes, sir, 'cause I was told that's the only way he
10 would accept my plea. It's something I did not want to do
11 from the beginning.
- 12 Q All right. Well, I want to look, same page, starting
13 on line 25 and it's gonna go over to the next page. "All
14 right, you have understood all my questions?" And you
15 answered, yes, sir?
- 16 A Correct.
- 17 Q Now you actually did understand all the questions that
18 day, right?
- 19 A Did I understand the questions?
- 20 Q Yes.
- 21 A Somewhat.
- 22 Q Did you anywhere in the transcript say you didn't
23 understand any of the judge's questions?
- 24 A No, sir.
- 25 Q Was there anything you felt you needed to ask the judge

PW - T. MCCALL - CROSS

1 at that point in the plea?

2 A Regarding the plea?

3 Q Yeah.

4 A Any question I need to ask him?

5 Q Yeah. Did you feel that day you needed to ask the
6 judge any questions at that point?

7 A Not at that point I don't recall, no.

8 Q Okay. And starting on line 3, page 24, do you see
9 where the Court asked: "Have your answers been truthful?"

10 A Yes, sir.

11 Q And what did you tell Judge Nettles under oath?

12 A Yes, sir.

13 Q And you're telling me that really that day you were
14 lying to Judge Nettles?

15 A Yeah, because I was told to.

16 Q You were told to. So you —

17 A I was told to.

18 Q So because someone told you to lie you thought it was
19 okay to lie?

20 A I didn't say it was okay. It was at when that point in
21 time I was in a lot of something I did not do, and he told
22 me that it was no way we could beat at trial. So I was
23 just really basically scared doing something I did not
24 want to do.

25 Q So you were doing that day, you understood you were

PW - T. MCCALL - CROSS

1 going to the prison at the end of this plea?

2 A Pretty much.

3 Q And so what you were doing was to lie to make sure you
4 went to prison?

5 A No.

6 Q You were just lying to ---

7 A Not to get the full extent of getting 43 years. I know
8 if I went to trial, something I wanted to do, and I know
9 if I went to Scott Floyd I would have had these 43 years,
10 not 25. So I had to look at it this where it's guilty if
11 I would take the plea and get lesser time or go to trial
12 with Scott Floyd and get more time. It was a either/or
13 and I picked the wrong decision at the time.

14 Q Why didn't you tell Judge Nettles, listen, I want a
15 trial?

16 A I told you. Scott Floyd told me that there was no way
17 that we could have beat it and before then he told me he
18 could beat. So I felt if I go to trial for something that
19 he's not going to fight for my life.

20 Q Were you unhappy with your attorney that day?

21 A Right.

22 Q You were unhappy with your attorney that day?

23 A Right.

24 Q The attorney that's telling you to lie?

25 A Right.

PW - T. MCCALL - CROSS

1 Q So you go ahead and lie for him to tell him that you
2 liked your attorney ---

3 A Not lying for him. I did on my behalf. Not for 43
4 years.

5 Q Well, what did you think you were getting out of
6 pleading guilty that day?

7 A Twenty years. And that was an agreement.

8 Q You're saying you should have gotten 20 instead of 25?

9 A Right. That was my understanding.

10 Q What point did you tell Judge Nettles, wait a minute, I
11 thought I was only getting 25 years?

12 A I didn't understand the sentence that he -- you know, I
13 thought only thing I did got was between everything run
14 concurrent, you understand, until I read on the paperwork
15 it say 25 years, 20 plus years.

16 MR. SPENCER: Beg the Court's indulgence.

17 THE COURT: Sure.

18 BY MR. SPENCER:

19 Q Tell me again, Mr. McCall, why do you think you were
20 gonna get 20 years that day?

21 A 'Cause before that the Solicitor came to me numerous
22 time with plea offers and kept saying that was what the
23 plea going to be. And one day I signed it saying that I
24 plead 20 years but, right during the time they were gonna
25 call me up, you know, I'm on trial, I changed my mind, I

PW - T. MCCALL - CROSS

1 mean, I knew we was on trial so he ---

2 Q And you thought it was -- you were telling Mr. Floyd
3 that?

4 A Yes. And so he still had the sentence sheet that I
5 signed then. And he brought before like, it was like
6 seven months after that, he brought it to the day of my
7 trial and use the same thing; but he marked out
8 concurrently, agreed to it and put consecutive on the
9 sentencing sheet.

10 Q Well, let me ask you this, did anyone tell you you were
11 -- that day that you were going to only get 20 years?

12 A Yes.

13 Q Who told you that day?

14 A Scott Floyd.

15 Q Scott Floyd told you you were ---

16 A That was the agreement.

17 Q --gonna get 20 years?

18 A That was the agreement. In the transcript it stated he
19 told the lawyer -- he told the judge that it was
20 understanding that the State said it was concurrent
21 sentence. But that's not the case now.

22 Q All right. I have no further questions.

23 THE COURT: Mr. Brooks.

24 **REDIRECT EXAMINATION**

25 BY MR. BROOKS:

PW - S. FLOYD - DIRECT

1 Q Mr. McCall, you still ask the Judge Seals here to grant
2 your PCR and give you a new trial; is that correct?

3 A Correct. Correct.

4 Q And you're saying that you were basically tricked by
5 Scott Floyd to plead guilty; is that correct?

6 A Correct.

7 Q Okay. No other questions.

8 THE COURT: All right. You may step down, thank
9 you. Call your next witness.

10 MR. BROOKS: We would call Scott Floyd to the
11 stand.

12 WHEREUPON,

13 **SCOTT FLOYD,**
14 having been duly sworn by the Deputy Clerk of Court,
15 testified as follows:

16 THE DEPUTY CLERK OF COURT: Please be seated and
17 state your name for the record.

18 THE WITNESS: My name is Scott Floyd.

19 **DIRECT EXAMINATION**

20 BY MR. BROOKS:

21 Q Mr. Floyd, you were appointed to represent through the
22 Public Defender's Office?

23 A Actually, when I was appointed to represent Mr. McCall
24 I was still in private practice so I was court appointed
25 basically.

PW - S. FLOYD - DIRECT

1 Q Now you recall how long you had been on this case
2 before it was disposed of?

3 A I'm looking for my order of appointment here. I sent
4 in the letter to the Solicitor's Office with my Rule 5
5 requests and Brady motion on May the 26th, 2006, so I
6 would have been appointed, I'm sure, very shortly before
7 that. And his plea took place on what, January 29th,
8 2007; is that correct?

9 Q That's correct.

10 A Right, so ---

11 Q Now do you recall how long you -- how many times you
12 met with him?

13 A You know, I met with Mr. McCall down at the detention
14 center I think several times. I don't recall exactly how
15 many times I met with him down there, but we also met up
16 here several times during terms where they were. During
17 plea weeks and everything they would -- they'd transport
18 him over here. I think a couple of times before his
19 actual plea, and we, you know, talked in conference rooms
20 back here behind the courtroom. So I don't know, five,
21 six times maybe.

22 Q Can you surmise the State's case that was against him?

23 A Mr. McCall's sister alleged that he raped her at gun
24 point, both orally and vaginally. That was her
25 allegation. She stated that after the rape occurred she

PW - S. FLOYD - DIRECT

1 left the residence where it happened, ran across the
2 street to a neighbor's house. She was completely naked,
3 was banging on his door. He let her in and they called
4 the police. That's the criminal sexual conduct case. Now
5 the -- my understanding was the neighbor was going to
6 verify that she did, in fact, appear banging on the door
7 completely naked and, you know, that he helped her call
8 the police. They took a -- they had some DNA samples that
9 they took from bed sheets and so forth in the house so I'm
10 sure they were gonna present some type of DNA evidence.
11 And I would think that was probably the guts of the case,
12 her testimony, and the DNA evidence.

13 Q And did you ---

14 A Well, and also, I'm sorry, Mr. McCall gave a confession
15 as well.

16 Q Okay. Did you go through all of these pieces of
17 evidence and the prospects of encountering them at trial?

18 A Certainly we discussed the evidence that they planned
19 on using against him. Yeah, I mean, we went through the
20 evidence together.

21 Q How did it -- I notice in the transcript you actually
22 had picked, started picking a jury; is that correct?

23 A That's correct.

24 Q And how did it turn around and become a guilty plea?

25 A Well, because Mr. McCall saw his sister and ready to

PW - S. FLOYD - CROSS

1 testify and he was convinced before that trial -- or he
2 told me that he talked to his father and his brother and
3 they convinced him his sister was not going to come up
4 here and testify. He saw her sitting in the courtroom and
5 he changed his mind; that's why. He backed out of the
6 trial.

7 MR. BROOKS: Beg the Court's indulgence.

8 (Attorney confers with defendant.)

9 MR. BROOKS: No other questions, Judge.

10 THE COURT: Thank you, Mr. Spencer.

11 MR. SPENCER: Thank you, Your Honor.

CROSS - EXAMINATION

12 BY MR. SPENCER:

13 Q Mr. Floyd, I want to ask about -- was this a
14 straight-up plea in terms of when he was pleading to the
15 three charges?
16

17 A When he pled, yes, it was -- he pled straight-up. The
18 solicitor actually was asking for consecutive sentences.

19 Q Okay.

20 A --- at that point. Now earlier they had offered him
21 concurrent sentences. He is correct about that. But he
22 balked. He decided he wanted to go through with this plea
23 on that earlier occasion. So the Solicitor, when he pled
24 -- decided to plead after we picked the jury, specifically
25 asked the Court for consecutive sentences. He struck out

PW - S. FLOYD - CROSS

1 -- he's correct. They did have the plea sheet still in
2 the file where originally it was going to be a
3 recommendation of concurrent sentences. They struck that
4 out when he decided to plead after we picked his jury and
5 put consecutive, okay.

6 Q And ---

7 A He was informed that the Solicitor was not going to
8 recommend a concurrent sentence at that time. And during
9 the plea I specifically mentioned to Judge Nettles, look,
10 the Solicitor has struck out the word concurrent, placed
11 consecutive over it. The fact that my signature is on
12 that plea sheet does not mean I think he should get
13 consecutive sentences. In other words, I'm not agreeing
14 to that but we're here -- but he's entering his plea. And
15 I tried to make that clear on the record what happened.

16 Q And the Solicitor agreed that it was only his
17 recommendation?

18 A That's correct.

19 Q All right.

20 MR. SPENCER: And then, Your Honor, that's
21 actually on Page 7 of the transcript, that series of
22 discussion.

23 BY MR. SPENCER:

24 Q Did Mr. Floyd tell you about any potential witnesses of
25 with a ---

PW - S. FLOYD - CROSS

1 A Mr. McCall never gave me the names or addresses of any
2 alibi witnesses. He sent me a letter at some point and I
3 believe he claimed that his sister voluntarily had sex
4 with him 'cause she wanted drugs. That was the only
5 deviation from his original confession. He never, never
6 mentioned an alibi witness.

7 Q All right. Whose decision was it to plead guilty?

8 A His decision was to plead guilty, yeah.

9 Q Were you ready to go to trial?

10 A Absolutely.

11 Q Did you tell Mr. McCall how to answer any questions?

12 A I never told him how to answer questions.

13 Q Did you tell him to lie to Judge Nettles?

14 A I certainly did not.

15 MR. SPENCER: Beg the Court's indulgence.

16 THE COURT: Sure.

17 MR. SPENCER: Your Honor, I have no further
18 questions.

19 THE COURT: Mr. Brooks, anything further?

20 MR. BROOKS: Beg the Court's indulgence.

21 THE COURT: Sure.

22 (Attorney confers with defendant.)

23 MR. BROOKS: No other questions, Judge.

24 THE COURT: Thank you, Mr. Floyd.

25 Anything further?

1 MR. SPENCER: Nothing to present in terms of
2 evidence, Your Honor.

3 THE COURT: How about you, Mr. Brooks?

4 MR. BROOKS: That's the Applicant's case, Judge.

5 THE COURT: All right, I'm gonna deny the
6 application. Thank you very much.

7
8
9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

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

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

Witness my hand at Florence, South Carolina,
this 18th day of November, 2010.



FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Thomas McCall, Jr., SCDC No 286886,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT
 2009-CP-21-1083

ORDER OF DISMISSAL

FILED
 2010 SEP 23 AM 11:03
 CLERK OF COURT
 FLORENCE COUNTY S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed July 16, 2009. The State made its return on March 25, 2010. A hearing on the matter was convened at the Florence County Courthouse on July 13, 2010. Applicant was present and represented by Charles T. Brooks, III. The State was represented by Assistant Attorney General David Spencer of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf. Also testifying was Applicant's Plea Counsel, Scott P. Floyd, Esquire. This Court also had before it the Application, the State's return, the Records of the South Carolina Department of Corrections, the Clerk of Court's Records regarding the subject convictions, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Applicant was indicted at the June 2006 term of the Florence County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2006-GS-21-869), criminal sexual conduct, first degree (2006-GS-21-868), and possession of cocaine base (2006-GS-21-867). He was represented by

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Amie Reel Shearin
 CLERK OF COURT C.P & G.S
 FLORENCE COUNTY, S.C.

Scott P. Floyd, Esquire. On January 29, 2007, the Applicant pled guilty as indicted. He was sentenced by the Honorable Michael G. Nettles to five (5) years imprisonment for ABHAN, to three (3) years, concurrent, for possession of cocaine base, and to twenty (20) years, consecutive, for criminal sexual conduct.

A timely Notice of Appeal was filed and an Anders¹ brief was submitted on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal. State v. McCall, 2009-UP-273, filed June 2, 2009. The remittitur was issued on June 18, 2009.

The Applicant filed his first PCR application on November 13, 2008. (2008-CP-21-2162). However, his direct appeal was still pending and his first PCR application was dismissed without prejudice pursuant to Rule 71.1(b), SCRCP. The Honorable Thomas A. Russo signed the Order of dismissal February 13, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

¹ Anders v. California, 386 U.S. 738 (1967).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCF.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty

plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Applicant's three convictions concern three separate events. First, Applicant was charged with ABHAN for an incident where Applicant and his brother physically assaulted and beat their half-sister. The CSC charge is when on a later date, Applicant raped the same half-sister. The drug charge is a separate incident that occurred after the first two incidents.

Applicant alleges his guilty plea was involuntary and that his plea counsel failed to conduct an adequate investigation concerning the CSC charge. Applicant complains that there were favorable witnesses to the incident and that he gave counsel addresses. However, Applicant contends, Counsel failed to subpoena the witnesses. Applicant contends Counsel told him what to say at the guilty plea.

Counsel testified that Applicant gave him no name or addresses for potential alibi witnesses. Counsel testified that he discussed the evidence with his client and was prepared for trial, and was picking a jury when Applicant decided to plead guilty. Applicant had wanted a trial because he was sure the victim, his sister, would not testify. Applicant decided to plead guilty when it became apparent that his sister was going to testify. Counsel testified that the evidence of guilt was considerable. Applicant gave a gruesome confession. See tr. pp. 10-11. Counsel testified that the State would have presented incriminating DNA evidence as well. After the incident, the victim fled naked to a neighbor's house and told the neighbor that she had just been raped by her brother. The neighbor would have testified to this event at trial. The victim's injuries were so severe that the nurse could not perform a rape examination when she

was taken for treatment. Counsel denied coaching Applicant on what to say at the plea and testified that it was Applicant's decision to plead guilty.

This Court finds that Applicant has not met his burden of proof. He have failed to provide testimony of any purported favorable witnesses. Further, this Court finds Counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony credible and notes that Applicant agreed with the Solicitor's statement of facts given at the guilty plea. This Court finds that Applicant has not met his burden of proof and therefore denies this application.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCF, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's

behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this day of Sept. 22, 2010.



William H. Seals, Jr.
Presiding Judge
12th Judicial Circuit

Maison, South Carolina

FILED
 2010 SEP 23 AM 11:03
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

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Crisie Reel Spain
 CLERK OF COURT C.P. & G.S.
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