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Oct 26 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Jocelyn J. Newman, Circuit Court Judge

JAY L. COOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000663

APPENDIX

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ATTORNEYS FOR RESPONDENT

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State of South Carolina	)	Court of General Sessions
County of Charleston	)	Ninth Judicial Circuit
	)	
STATE OF SOUTH CAROLINA,	)	Case Number:
	)	2024-GS-10-01536
Plaintiff,	)	
	)	
vs.	)	
	)	
JAY L. COOK,	)	NEGOTIATED PLEA
	)	
Defendant.	)	TRANSCRIPT OF RECORD
	)	

March 11, 2024
Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson

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

MR. STEPHEN J. RYAN,
Assistant Attorney General,
for the Plaintiff;

MR. BENJAMIN A. MACK,
Attorney at Law,
for the Defendant.

Jamie Bickett
Official Court Reporter

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WITNESSES

NAMEPAGE

None

EXHIBITS

NUMBERDESCRIPTIONIDEV

None

CERTIFICATE OF COURT REPORTER..... 15

1 (The following proceedings were had in open court.)

2 THE COURT: This is the State versus Jay Cook,
3 2024-GS-10-1536 on a waiver, sexual exploitation of a minor
4 third degree.

5 Are there any recommendations or negotiations?

6 And if the assistant attorney general could identify
7 himself for the benefit of the court reporter.

8 MR. RYAN: May it please the Court.

9 Good morning, your Honor. Stephen Ryan for the attorney
10 general's office.

11 And yes, there is a negotiation of five years active.
12 In exchange, the State is dismissing the other pending
13 charges. This offense is a mandatory sex offender registry
14 offense as well.

15 THE COURT: And what are -- how many other charges are
16 being dismissed?

17 MR. RYAN: There are seven --

18 THE COURT: I need to know if --

19 MR. RYAN: Yes, your Honor. There --

20 THE COURT: I'm sorry. I was talking to my clerk.

21 MR. RYAN: There are seven counts of sexual exploitation
22 of a minor in the third degree that are being dismissed and
23 then two counts of sexual exploitation of a minor in the
24 second degree that are also going to be dismissed as a result
25 of this plea.

1 THE COURT: Does he have any record?

2 MR. RYAN: No, your Honor.

3 THE COURT: Mr. Mack, have you explained to your client
4 the charge, the punishment, and his rights?

5 MR. MACK: Yes, Judge.

6 THE COURT: Do you believe he understands the charge,
7 the punishment, and his rights?

8 MR. MACK: Yes, he understands.

9 THE COURT: Does he wish to plead guilty or not guilty?

10 MR. MACK: He wishes to plead guilty.

11 THE COURT: Do you agree with that decision?

12 MR. MACK: I agree.

13 THE COURT: Has he ever been evaluated to determine his
14 competency?

15 MR. MACK: He has not, Judge.

16 THE COURT: Does he wish to waive presentment of the
17 indictment?

18 MR. MACK: Yes, Judge.

19 THE COURT: Have you explained to him the SVP process
20 and all the collateral consequences of that?

21 MR. MACK: Yes, Judge.

22 THE COURT: Including the registry for life?

23 MR. MACK: Yes, Judge.

24 THE COURT: Have you also explained to him the
25 multidisciplinary evaluative process once he is leaving the

1 department and the potential that he could be civilly
2 committed indefinitely?

3 That's a long question. You want me to break it down?

4 MR. MACK: Judge, I have --

5 THE COURT: I'm sorry. I sound like a --

6 MR. MACK: I have not discussed --

7 THE COURT: -- train of consciousness.

8 Do you want to discuss that with him right quick?

9 (Pause in proceedings.)

10 MR. MACK: Yes, Judge.

11 THE COURT: Do you need additional time, or do you feel
12 like you've had enough time?

13 MR. MACK: I think we covered it, Judge.

14 THE COURT: Okay. So -- and I may have -- I think I've
15 already asked this question.

16 He does wish to waive presentment of the indictment?

17 MR. MACK: Yes, Judge.

18 THE COURT: Have you explained to him that he will have
19 to register as a sexually violent predator for the rest of
20 his life?

21 MR. MACK: Uh --

22 THE COURT: Well, you know --

23 MR. MACK: On the sex offender registry.

24 THE COURT: Yeah.

25 MR. MACK: I think -- I believe for potentially 25

1 years. I think it's different --

2 THE COURT: Yeah.

3 MR. MACK: -- because it's a Tier 2 offense.

4 THE COURT: Exactly. But --

5 MR. MACK: Yes.

6 THE COURT: -- worst-case scenario. Yeah.

7 And that prior -- have you explained to him what a
8 negotiated plea is?

9 MR. MACK: Yes, Judge.

10 THE COURT: Have you explained to him that my only
11 option is to accept or reject the plea?

12 MR. MACK: Yes.

13 THE COURT: Have you explained to him that once he is
14 done with his active time that he will be evaluated?

15 MR. MACK: Judge, I have not. I can cover that real
16 quick.

17 THE COURT: Yeah, I think you need to explain to him
18 that he will be evaluated by the multidisciplinary team who
19 will decide whether he should be civilly committed
20 indefinitely and that we have no control over that process,
21 but that is a collateral consequence.

22 MR. MACK: Yes, I can do that.

23 THE COURT: Okay.

24 (Pause in proceedings.)

25 MR. MACK: Thank you, Judge.

1 THE COURT: You're welcome.

2 Let's see. Would he be subject to a monitor when he
3 comes out, Ms. Holmes? Any kind of GPS or anything?

4 PROBATION AGENT: No.

5 THE COURT: Okay. I just wanted to make sure. Thank
6 you.

7 Sir, raise your right hand to be sworn.

8 (Defendant sworn.)

9 THE COURT: I need you to speak up a little bit for me.

10 THE DEFENDANT: I do.

11 THE COURT: Thank you.

12 Does he need to get a little closer to that microphone
13 so we can hear him?

14 THE DEFENDANT: I do.

15 THE COURT: Thank you, sir.

16 If you would tell me your full name for the record.

17 THE DEFENDANT: It's Jay Cook.

18 THE COURT: Mr. Cook, how old are you?

19 THE DEFENDANT: Sixty-one.

20 THE COURT: What was the last grade you finished?

21 THE DEFENDANT: Twelfth.

22 THE COURT: Did you graduate?

23 THE DEFENDANT: Yes.

24 THE COURT: What was your last job?

25 THE DEFENDANT: I'm a painting contractor,

1 self-employed.

2 THE COURT: And how long were you a painting contractor?

3 THE DEFENDANT: At least 40 years, 45 years.

4 THE COURT: Are you married?

5 THE DEFENDANT: No.

6 THE COURT: Do you have any children?

7 THE DEFENDANT: No.

8 THE COURT: Are you on probation or parole?

9 THE DEFENDANT: No.

10 THE COURT: Ever been treated for the abuse of alcohol,
11 drugs, or mental illness?

12 THE DEFENDANT: No.

13 THE COURT: Have you had any drugs or alcohol or
14 medication in the last 72 hours?

15 THE DEFENDANT: No.

16 THE COURT: On the offense of sexual exploitation of a
17 minor third degree, how do you plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Do you understand the maximum penalty is ten
20 years?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you also wish to waive presentment of the
23 indictment?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that you will be required

1 to register on the sexually violent predator registry?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you've entered into
4 what is called a "negotiated plea"?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand the Court's only option is
7 to accept or reject the plea?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you also understand that before you're
10 released, the multidisciplinary team will evaluate you to
11 determine if you should receive an indefinite civil
12 commitment for treatment?

13 THE DEFENDANT: Yes.

14 THE COURT: I want you to listen to the facts.
15 You may proceed, Mr. Ryan.

16 MR. RYAN: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. RYAN: The investigation of Mr. Cook began in 2022
19 when Bing Images, an online service provider, contacted the
20 National Center for Missing and Exploited Children with
21 reference to files of child pornography being placed on its
22 platform. The National Center forwarded the tip to the South
23 Carolina Attorney General's Office, who then forwarded it to
24 the Charleston County Sheriff's Office for further
25 investigation. The IP address of the user led investigators

1 to the defendant's address, which is in Charleston County.

2 On May 26, 2022, investigators executed a search warrant
3 on that address and did interview the defendant where he
4 stated that he was the one responsible for the child
5 pornography. A forensic examination of his electronics
6 located approximately 2,000 files on two different devices,
7 one of which is the subject of today's plea, titled
8 44212.jpeg. It's an image file that shows a minor appearing
9 in a state of sexually explicit nudity.

10 And your Honor, that is the State's recitation of the
11 facts.

12 He has been in custody since that May 26, 2022, arrest.
13 I have 655 days, your Honor.

14 THE COURT: The date of arrest was June?

15 MR. RYAN: May 26, 2022.

16 THE COURT: May 26, 2022.

17 MR. RYAN: Yes, ma'am.

18 THE COURT: And the search warrant was executed on the
19 same date?

20 MR. RYAN: Correct, Judge.

21 THE COURT: Sir, do you agree or disagree with the
22 facts?

23 THE DEFENDANT: Agree.

24 THE COURT: Feel anything needs to be changed or added
25 to the facts?

1 THE DEFENDANT: No.

2 THE COURT: Are you pleading guilty, sir, because you're
3 guilty?

4 THE DEFENDANT: Yes.

5 THE COURT: Can't hear you.

6 THE DEFENDANT: Yes.

7 THE COURT: You're entitled to a jury trial. At a jury
8 trial, you're entitled to a presumption of innocence. The
9 State has the burden of proving your guilt beyond a
10 reasonable doubt. You would have the right to confront and
11 cross-examine the State's witnesses, call your own witnesses,
12 present any defenses, challenge any statements, and remain
13 silent and your silence could not be used against you.

14 Do you understand your rights?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that you're giving up
17 those rights?

18 THE DEFENDANT: Yes.

19 THE COURT: Are there any deals you're relying on that
20 I've not been told about?

21 THE DEFENDANT: No.

22 THE COURT: Have you been satisfied with your lawyer?

23 THE DEFENDANT: Yes.

24 THE COURT: Has he answered all of your questions?

25 THE DEFENDANT: Yes.

1 THE COURT: Done all you've asked or expected?

2 THE DEFENDANT: Yes.

3 THE COURT: Any complaints about his services?

4 THE DEFENDANT: No.

5 THE COURT: Has anyone promised you anything to plead
6 guilty?

7 THE DEFENDANT: No.

8 THE COURT: Has anyone threatened or coerced you to
9 plead guilty?

10 THE DEFENDANT: No.

11 THE COURT: Are you pleading guilty freely and
12 voluntarily and of your own will?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you understood my questions?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you need to ask any questions?

17 THE DEFENDANT: No.

18 THE COURT: Have you been truthful?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that you have the right to
21 appeal the guilty plea and sentence but you must do so in
22 writing within ten days of today?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that if you can't afford
25 an attorney for that process, counsel will be appointed to

1 you free of charge?

2 THE DEFENDANT: Yes.

3 THE COURT: Sir, you may have discussed parole or parole
4 eligibility with your lawyer or with others, but until you're
5 sentenced, no one can tell you when, if ever, you would be
6 eligible for parole or under what conditions. You should
7 assume that you will serve any time in jail that you're
8 sentenced to day for day.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: Were there any victims that needed to be
12 notified? I didn't think there were.

13 MR. RYAN: No. There were no live victims in this case.

14 THE COURT: Yeah.

15 And there's no restitution, correct?

16 MR. RYAN: Correct, your Honor.

17 THE COURT: I find there's a substantial factual basis
18 for the plea, that the defendant has entered the plea freely,
19 voluntarily, knowingly, and intelligently, with the advice
20 and assistance of counsel with whom he has indicated to the
21 Court he is satisfied, and I will accept the plea.

22 Anything further from the State?

23 MR. RYAN: No, your Honor.

24 THE COURT: Anything further from the defense? I've
25 accepted the negotiated plea.

1 MR. MACK: Thank you, Judge. Nothing further.
2 Appreciate it.

3 THE COURT: Sir, you're sentenced consistent with the
4 negotiated plea to the state department of corrections for a
5 period of five years. You'll get credit pursuant to
6 24-13-40, to be calculated and applied by the department of
7 corrections. And you'll have to register on the sex offender
8 registry pursuant to the Code 23-3-430.

9 Thank you.

10 (End of proceedings.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Ninth Judicial Circuit, the Court of General Sessions for Charleston County, South Carolina.



Official Court Reporter

Dated this 16th day
of May, 2025.

FORM 5

2025-CP-10-1203

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of CHARLESTON)Jay L. Cook)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2025 MAR -14 PM 1:29
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention ALLEN DALE
2. Name and location of Court which imposed sentence CHARLESTON COUNTY
100 BROAD ST, CHARLESTON S.C. 29401
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2024651001536
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 11, 2024
- (b) SCCC SENT 5Y
- (c) CTS
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) DID NOT HAVE ACCESS TO ATTORNEYS WHILE AT KIRKLAND AND ALLENDALE.
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) CONSTITUTIONAL VIOLATIONS
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) NOT CHALLENGING INADMISSIBLE EVIDENCE.
- (b) FAILING TO PRESENT A VIABLE DEFENSE STRATEGY
- (c) POOR COMMUNICATION WITH THE CLIENT
NOT ADVISING THE CLIENT OF THEIR RIGHTS PROPERLY.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? *no*

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

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

(a) your arraignment and plea? YES - FEMALE AT BOND HEARING
 (b) your trial, if any? _____
 (c) your sentencing? YES - B. MALK.
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

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

i. BENJAMIN MALK
101 MEETING ST 5TH FLOOR CHARLESTON SC 29401

ii. _____

 iii. _____

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

i. "PLEA AGREEMENT" - WAS COERCED BY APPLICANT -
APPLICANT WANTED TO GO TO TRIAL.

ii. _____

 iii. _____

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

OVER TURN THE VERDICT COMPLETELY

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

No

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

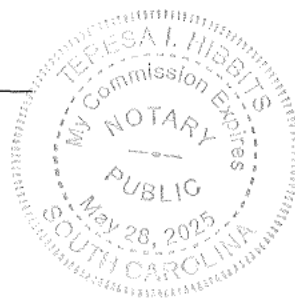
I, JAY L. COOK, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jay L. Cook

SWORN to and subscribed before me this 3 day of March, _____.

Teresa L. Hibbits (L.S.)
Notary Public

My Commission Expires: 5/28/2025



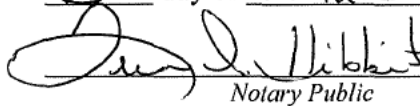
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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

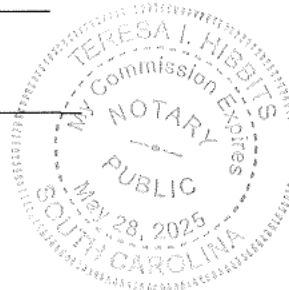
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
3 day of March, 2025.


Notary Public

My Commission Expires: 5/28/2025



2025-CP-10-1203

Bonnie Campbell

From: Jay Cook [REDACTED]
Sent: Tuesday, March 04, 2025 3:24 PM
To: Bonnie Campbell
Subject: Re: address

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

Address is: [REDACTED]
(Should have also been on envelope). I will be at this address until March 25, 2025. Afterwards, please use [REDACTED]

Thank You
Jay L. Cook

On Tue, Mar 4, 2025, 2:31 PM Bonnie Campbell <BCampbell@charlestoncounty.org> wrote:

Good afternoon,

I received a PCR application associated with this email. The name on the application is Jay L. Cook. The only contact information I received is a phone number and this email. Can you please send me the best contact address for future notifications?

Thank you.

Bonnie L. Campbell

Court Management Supervisor

100 Broad Street, Ste. 106

Charleston, S.C. 29401

843-958-5004

THE SEARCH WARRANT COVERS
THE FOLLOWING: INTERIOR OF HOME,
CARPILAGE OF HOME, OUT BUILDINGS,
VEHICLES AND TRAILERS.

THE WARRANT DID NOT "SPECIFY"
A PLACE INSIDE THE HOME TO BE SEARCHED.
EVERY ROOM FOR THE HOME WAS RANSACKED
BY THE SHERIFFS DEPARTMENT. BOTH MR.
HOWARD AND MR. COOK WERE DETAINED
OUTSIDE OF THE HOME THE WHOLE TIME
THE SEARCH TOOK PLACE.

THERE WERE NO "PARTICULARS" AS TO
WHERE TO SEARCH - JUST A GENERAL
SEARCH TOOK PLACE.

AT THE START OF THE FRONT DOOR
BEING OPENED FROM THE OUTSIDE, AND
DEPUTY BOWEN STATED HE HAD A
SEARCH WARRANT, MR HOWARD AND MR.
COOK WERE KEPT OUTSIDE OF THE
HOME WHILE ENTIRE SEARCHED MOVED
FORWARD INSIDE THE HOME.

AT THE END OF SEARCH, DEPUTY
BOWEN WENT OVER THE INVENTORY
LIST WITH MR. HOWARD. MR. COOK WAS
HANDCUFFED, CHAINED AND TAKEN TO
DEPUTY BOWEN'S VEHICLE. BOWEN STATED
TO MR. COOK, "EVEN THOUGH YOU LEGALLY
LIVE HERE, I DON'T HAVE TO SHOW YOU THIS"

BOWEN WAS REFERRING
TO THE SEARCH WARRANT
AND OTHER DOCUMENTS HE HELD
IN HIS HAND. AFTER MR. BOWEN
STATED THIS, HE LAUGHED.

MR COOK FINALLY SEEN THE
SEARCH WARRANT, AFFIDAVIT AND
INVENTORY LIST INCLUDED IN
THE "DISCOVERY" WHICH WAS DELIVERED
TO HIM ON DECEMBER 12TH OR 14TH 2002 -
A TOTAL OF SIX AND A HALF (6.5)
MONTHS AFTER THE SEARCH.

PLEASE SEE:

US V KOW 58 F3d 423 (1995)

US V MCGREW 122 F3d 847 (1997)

US V GANTT 194 F3d 987 (1999)

US V GRUBBS 377 F3d 1072 (2004)

FIRST PARAGRAPH
FROM CASE TEXT - 194 F3d 987, JUNE
07, 1999, IN US V GANTT - VI RULE 41(d)'S
SERVICE REQUIREMENT - THE GOVERNMENT
VIOLATED F.R.C.R.P. - 41(d) BY FAILING
TO PRESENT GANTT WITH A COMPLETE
COPY OF THE WARRANT AT THE
ONSET OF THE SEARCH OF HER
APARTMENT.

8TH PARA-
GRAPH
THE WARRANT CLEARLY VIOLATED
THE FOURTH AMENDMENT'S ~~PAR~~ PARTICULAR-
ITY REQUIREMENT AND FOR
PURPOSES OF RULE 41(d) WAS NOT

A VALID WARRANT.

NOT SHOWING THE WARRANT

4TH AMENDMENT VIOLATION AGAINST
UNREASONABLE SEARCH & SEIZURES.

CUSTODIAL INTERROGATION WITH INEFFECTIVE MIRANDA WARNINGS,

ON THE MORNING OF MAY 26, 2022
AT AROUND 7:30AM, THE FRONT DOOR
WAS OPENED FROM THE OUTSIDE - SHERIFFS
DEPARTMENT - SEARCH WARRANT - VACATE
THE PREMISES NOW."

MR. BOWEN PULLED MR. COOK FROM
THE HOME. MR COOK WAS SLAMMED AGAINST
A CAR AND HAND CUFFED BY A FEMALE
DEPUTY.

MR BOWEN WENT INTO THE HOME
AND SOON MR HOWARD WAS ESCORTED
OUT OF THE HOME. MR BOWEN THEN
ASKED MR. COOK FOR THE PASSWORDS TO
HIS COMPUTERS, MR COOK REMAINED IN
HANDCUFFS FOR ABOUT TEN MINUTES
WHEN THEY WERE FINALLY REMOVED.

QUESTION WENT ON FOR OVER ONE
HOUR BY MR. BOWEN. WHEN MR. COOK
TOOK A STEP AWAY FROM THE CAR,
HE WAS PULLED BACK BY FEMALE
DEPUTY. THIS OCCURRED SEVERAL
TIMES.

AROUND 8:30AM MR. COOK WAS
ESCORTED TO MR. BOWEN'S POLICE
VEHICLE WHERE THE MIRANDA WARNINGS
WERE READ TO HIM. MR. BOWEN WENT
ON TO ASK THE VERY SAME QUESTIONS
HE ASKED OVER THE PREVIOUS HOUR.

PER MIRANDA V ARIZONA

384 US 436 444 (1966)

"CUSTODIAL INTERROGATION REFERS TO QUESTIONING INITIATED BY LAW ENFORCEMENT AFTER A PERSON HAS BEEN TAKEN INTO CUSTODY OR OTHERWISE DEPRIVED OF HIS FREEDOM OF ACTION IN ANY SIGNIFICANT WAY"

THE UNITED STATES SUPREME COURT HAS CLARIFIED THAT A PERSON IS BEING SUBJECTED TO A CUSTODIAL INTERROGATION IF 'A REASONABLE PERSON WOULD HAVE FELT HE OR SHE WAS NOT AT LIBERTY TO TERMINATE THE INTERROGATION AND LEAVE.'

MR COOK WAS NOT ABLE TO LEAVE.

IN OREGON V ELSTAD, 105 SCT 1285 (1984)
PAGE 470 US 315:

RESPONDENT WAS TAKEN INTO CUSTODY AT THE TIME HE MADE HIS STATEMENT - HE HAD NOT BEEN INFORMED THAT HE WAS UNDER ARREST.

WHEN POLICE ASK QUESTIONS OF A SUSPECT IN CUSTODY WITHOUT ADMINISTERING THE REQUIRED WARNINGS, MIRANDA DICTATES THAT THE ANSWERS RECEIVED BE PRESUMED COMPELLED AND THAT THEY BE EXCLUDED FROM EVIDENCE AT TRIAL IN THE STATES CASE IN

CHIEF,

THE PRACTICE OF INTERROGATING SUSPECTS WITHOUT READING THEM A MIRANDA WARNING, THEN READING THEM A MIRANDA WARNING AND ASKING THEM TO REPEAT THEIR CONFESSIONS IS UNCONSTITUTIONAL - MISSOURI V SIEBERT 542 US 600 (2004)

IN THE 2ND PARAGRAPH, LAST SENTENCE OF MISSOURI V SIEBERT, IT STATES: "THE QUESTION HERE IS THE ADMISSIBILITY OF THE REPEAT STATEMENTS. BECAUSE THIS MIDSTREAM RECITATION OF WARNINGS AFTER INTERROGATION AND UNWARNED CONFESSION COULD NOT EFFECTIVELY COMPLY WITH MIRANDA'S CONSTITUTIONAL REQUIREMENT - WE HOLD THAT A STATEMENT REPEATED AFTER A WARNING IN SUCH CIRCUMSTANCES IS INADMISSIBLE.

ARIZONA V MIRANDA 86 SCT 1602 (1966)
MISSOURI V SIEBERT 124 SCT 2601 (2003)
OREGON V STEBBE 105 SCT 1285 (1984)

5TH-6TH AMENDMENT VIOLATION
TO THE 14TH AMENDMENT.

17-23-90

IN OCTOBER 2023, MR COOK
FILED A 17-23-90 WITH THE CLERK
OF COURTS. COURT SAID THIS NEEDS
TO BE FILED BY "ATTORNEY ON RECORD";

ON OCTOBER 18, 2023, MR MACK
STATED TO MR. COOK THAT A GRAND
JURY INDICTMENT HAD ALREADY
HANDLED DOWN AN INDICTMENT.
A 17-23-90 WOULD NOT SUFFICE
(DUE PROCESS OF LAW - 14TH AMENDMENT
VIOLATION).

ON MARCH 11, 2024, WHILE MR. COOK
WAS IN THE COURT ROOM, MR MACK
TOLD MR. COOK THAT THE GRAND JURY
NEVER HANDLED DOWN AN INDICTMENT
IN THIS CASE.

IN COOLIDGE V NEW HAMPSHIRE
403 US 443 (1971) IT STATES THAT
"IT IS THE DUTY OF THE COURTS TO BE
WATCHFUL FOR THE CONSTITUTIONAL
RIGHTS OF THE CITIZEN, AND AGAINST
ANY STEALTHY ENCROACHMENTS THERE IN,"

IN MR. COOK'S CASE - WHO IS THE COURTS?
CRIMINAL PROCEDURE 17-19-10 OUTLINES
THAT AN OFFENSE MUST BE PROSECUTED
BASED ON A GRAND JURY INDICTMENT,
MEANING A GRAND JURY MUST
FORMALLY CHARGE SOMEONE WITH
A CRIME BEFORE THEY CAN BE

PROSECUTED IN COURT: ESSENTIALLY
SPECIFYING THAT A GRAND JURY IS
REQUIRED TO BRING CHARGES IN
CRIMINAL PROCEEDINGS WITHIN
THE STATE OF SOUTH CAROLINA.

THE PURPOSE OF A GRAND JURY
ACTS AS A CHECK ON THE GOVERN-
MENT, PROTECTING CITIZENS FROM
UNWARRANTED PROSECUTIONS

NO PERSON SHALL BE HELD
TO ANSWER IN ANY COURT FOR AN
ALLEGED CRIME OR OFFENSE, UNLESS
UPON INDICTMENT BY A GRAND
JURY.

MR. COOK TOLD MR MACK (ATTORNEY)
ON JUNE 07, 2022 THAT THE SEARCH
WARRANT WAS NEVER SHOWN OR PRESENTED
TO MR. COOK ON MAY 26, 2022. WHEN
MR. MACK HEARD THIS, HE BECAME AGITATED
AND HAD TO GO. MR. MACK TOLD MR. COOK
HE WOULD BE IN CONTACT BY WEEKS END,
MR. MACKS NEXT CONTACT (VIDEO/PHONE) WAS
HELD ON OCTOBER 18, 2023 - 16+ MONTHS
LATER.

ON FEBRUARY 12, 2024, MR. MACK WAS
PUSHING FOR A PLEA - MR COOK TOLD MR
MACK THAT DAY THAT HE WANTED TO GO
TO TRIAL. MACK DID NOT LISTEN.

MR. COOK TOLD MR. MACK THAT ALL
EVIDENCE SHOULD BE SUPPRESSED -

US V GANTT - 194 F3d 987

US V MCGREW - 122 F3d 847

MR MACKS REPLY WAS THAT EVIDENCE
IS ONLY SUPPRESSED ON APPEAL - NOT
THE FIRST TRIAL - MR MACK TOLD MR.
COOK THAT AFTER THE FIRST TRIAL, HE
WOULD FILE AN APPEAL IN ABOUT 6-8 YEARS,
BUT ONLY IF HE REMEMBERS TO DO SO.

MANY CONSTITUTIONAL RIGHTS WERE
VIOLATED BY MR. MACK, AND THIS CASE.
4TH AMENDMENT, 5TH AMENDMENT, 6TH AMENDMENT,
8TH AMENDMENT, ALL THROUGH THE 14TH AMENDMENT.

I, JAY L. COOK, BECAUSE OF MY
POVERTY, I AM SEEKING A PRO-BONO
ATTORNEY TO HELP OUT WITH THIS CASE.

SIGNED THIS 03 DAY OF MARCH 2025

A handwritten signature in black ink, appearing to read "Jay L. Cook", written over the signature line.



1330 Lady Street, Suite 401

Post Office Box 11433

Columbia, South Carolina 29211-1433

Telephone: (803) 734-1343

Facsimile: (803) 734-1345

E-Mail: executive@sccid.sc.gov

Hugh Ryan, Esq., Executive Director

Hervy Young, Deputy Director and General Counsel

Lori Frost, Assistant Director

RE: Request for Counsel for PCR Action

Dear :

We received your letter requesting an attorney to handle a Post-Conviction Relief action. SCCID does not provide attorneys to file PCR actions. If you cannot afford to retain an attorney to prepare the PCR application, then you must complete the application yourself to the best of your ability and file it as required with the clerk of court in the county where your plea took place. **When you file the PCR application, you should include a notice to the clerk of court that you are indigent and request that the clerk appoint an attorney to represent you.** If the PCR application is allowed to proceed, the Attorney General should direct the clerk of court to appoint an attorney to handle the PCR. That attorney can review the application and make any necessary revisions.

I don't know what resources you have available in the Department of Corrections, so I am including copies of the following:

1. Application for Post-Conviction Relief Form
2. Civil Action Coversheet Form
3. Administrative Order regarding appointment of counsel in PCR cases
4. SC Court Rule 71.1 Post-Conviction Relief Actions
5. SC Code Title 17, Chapter 27: Uniform Post-Conviction Procedure Act

Sincerely,

W. Lawrence Brown

Deputy General Counsel

Enclosures



Charleston County

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Case #

Case Type All Case Types

Case SubType All Case Sub-Types

Last Name/Business cook

First Jay

Middle

Suffix

Party Type All

Action Type All Actions

CDR Code

Indictment #

Date Type

Beginning

Ending

Tax Map# From

Through

Only for Civil Cases... Index Search ☒ All ☐ Lis Pendens ☐ Judgments | Cross Index Search ☒ All ☐ Judgment For ☐ Judgment Against

Search

Reset Search Fields

Name Search Option ☒ Begins With ☐ Contains

Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Cook, Jay	Defendant	1996CP1002948	08/22/1996	Settled	03/06/1998	Common Pleas	Foreclosure 420		Common Pleas
Cook, Jay	Defendant	1996LP1006346	08/22/1996	Dismissed	03/06/1998	Lis Pendens	Lis Pendens		Common Pleas
Cook, Jay	Defendant	2022CV1011501481	10/13/2022	Disposed	11/08/2022	Civil	Summons & Compl PS	2022CV1011501481	Small Claims - North
Cook, Jay	Defendant	2023CP1004070	08/21/2023	Judgment	08/21/2023	Common Pleas	Magistrate Judg 720	2023CP1004070	Common Pleas
Cook, Jay	Defendant	2024CP1003492	07/10/2024	Judgment	07/10/2024	Common Pleas	Magistrate Judg 720	2024CP1003492	Common Pleas
Cook, Jay	Defendant	2024CV1011500301	02/22/2024	Disposed	04/03/2024	Civil	Summons & Complaint	2024CV1011500301	Small Claims - North
Cook, Jay Jennings	Defendant	G883441	11/19/2001	Dismissed	12/04/2001	Criminal-Clerk			General Sessions
Cook, Jay Jennings	Defendant	G883442	11/19/2001	Dismissed	12/04/2001	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202810	05/27/2022	Disposed	03/11/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202811	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202813	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202814	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202815	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202816	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202817	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202819	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202820	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions
Cook, Jay L	Defendant	2022A1010202821	05/27/2022	Dismissed	03/19/2024	Criminal-Clerk			General Sessions

ON THE CHARLESTON COUNTY PUBLIC
INDEX

JAY COOK CASE# 1996 CP 1002948

1996 CP 1006344

BOTH CASES IN 1996 -

JAY JENNINGS COOK - CASE# G883441 11-19-2001

G883442 11-19-2001

THE ABOVE MENTIONED PEOPLE ARE NOT
THE JAY L. COOK LISTED FOR 2022-2024.

MR JAY L. COOK MOVED TO CHARLESTON,
SOUTH CAROLINA FROM TOLEDO, OHIO ON
JANUARY 2002.



Julie J. Armstrong
Charleston County Clerk of Court

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The State of South Carolina VS Jay L Cook

Case Number:	2022A1010202810	Court Agency:	General Sessions	Filed Date:	05/27/2022
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Jefferson, Deadra L.
Disposition:	Pled Guilty				
Disposition Date:	03/11/2024	Date Received:	06/01/2022	Arrest Date:	05/26/2022
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2024GS1001536	Waiver Date:	03/11/2024
Probation Case:					

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Bickett, Jaime					Court Reporter		03/13/2024
Bowen, Robert J	3691 Leeds Avenue North Charleston SC 29405-				Officer		05/27/2022
Cook, Jay L	1219 Marvin Ave Charleston SC 29407-5336	White	M	1963	Defendant		03/13/2024
Mack, Benjamin Andrew	101 Meeting Street, 5Th Floor Charleston SC 29401				Defendant Attorney		06/07/2022
Ryan, Stephen Joseph	1201 Main Street 360 Columbia SC 29201				The State		06/14/2022

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Cook, Jay L	0381-Sex / Sexual exploitation of a minor, Third degree	0381-Sex / Sexual exploitation of a minor, Third degree	03/11/2024

Sentencing

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	SCDC Snt 5Y						
	CTS						

Associated Cases

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Bond Court	2022A1010202810	Y		Associated by Case Transfer	05/27/2022	05/27/2022	Transferred	Transferred from Bond Court/Other Court

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Cook, Jay L	Active - Non Probation	Filing		03/13/2024-10:25		
Cook, Jay L	Indictment/Waiver	Filing		03/11/2024-10:26		
Cook, Jay L	Sentence/PG	Filing		03/11/2024-10:26		
Mack, Benjamin Andrew	3/11/2024_PDPL_Roster/Notice of Plea Roster Publication Sent	Action		02/26/2024-09:59	03/11/2024-09:59	
Ryan, Stephen Joseph	3/11/2024_PDPL_Roster/Notice of Plea Roster Publication Sent	Action		02/26/2024-09:59	03/11/2024-09:59	
Cook, Jay L	Order/Relieve Counsel/Withdrawn	Order		02/14/2024-11:35	03/11/2024-11:35	
Mack, Benjamin Andrew	2/9/2024_Motions_Roster/Notice of Motions Roster Publication	Action		02/08/2024-16:00	03/11/2024-16:00	
Ryan, Stephen Joseph	2/9/2024_Motions_Roster/Notice of Motions Roster Publication	Action		02/08/2024-16:00	03/11/2024-16:00	
Ryan, Stephen Joseph	2/12/2024_PDPL_Roster/Notice of Plea Roster Publication Sent	Action		01/18/2024-11:20	03/11/2024-11:20	
Mack, Benjamin Andrew	2/12/2024_PDPL_Roster/Notice of Plea Roster Publication Sent	Action		01/18/2024-11:20	03/11/2024-11:20	
Cook, Jay L	Motion/Relieve As Counsel	Motion		10/25/2023-14:49	02/09/2024-14:49	
Cook, Jay L	Order/Seal Documents	Order		05/10/2023-13:47	03/11/2024-13:47	
Cook, Jay L	Motion/Relieve As Counsel	Motion		04/19/2023-15:34	02/09/2024-15:34	
Cook, Jay L	Preliminary Hearing / Bound Over	Filing		04/19/2023-15:23	04/19/2023-15:23	
Cook, Jay L	Preliminary Hearing Scheduled w/ Notices	Event		04/19/2023-09:30	04/19/2023-09:45	
Cook, Jay L	Preliminary Hearing Continued	Filing		12/14/2022-13:30	12/14/2022-00:00	
Cook, Jay L	Motion/Relieve As Counsel	Motion		08/29/2022-13:49	03/11/2024-13:49	
Cook, Jay L	Initial Appearance Date	Event		07/15/2022-14:00	06/08/2022-17:00	
Cook, Jay L	Order/Seal Documents	Order		07/07/2022-16:41	03/11/2024-16:41	
Cook, Jay L	Order/Seal Documents	Order		06/28/2022-15:26	03/11/2024-15:26	

Cook, Jay L	Notice of Appearance/ Assignment of AG	Filing		06/13/2022-09:20	03/11/2024-09:20	
Cook, Jay L	Order/Seal Documents	Order		06/08/2022-09:54	03/11/2024-09:54	
Cook, Jay L	Motion/Brady Motion/Edwards Notice	Filing		06/07/2022-17:46	06/07/2022-17:46	
Cook, Jay L	Notice of Appearance	Filing		06/07/2022-17:34	03/11/2024-17:34	
Cook, Jay L	Preliminary Hearing Request	Filing		06/06/2022-00:00	06/08/2022-00:00	
Cook, Jay L	Warrant and Affidavit	Filing		06/01/2022-15:02	03/11/2024-15:02	
Cook, Jay L	Order/Original Bond Order	Order		06/01/2022-15:02	03/11/2024-15:02	
Cook, Jay L	Miscellaneous	Filing		06/01/2022-15:02	03/11/2024-15:02	
Cook, Jay L	Bond Comment To Notes Screen	Filing		05/27/2022-14:40	03/11/2024-14:40	
Cook, Jay L	Bond Comment To Notes Screen	Filing		05/27/2022-13:36	03/11/2024-13:36	
Cook, Jay L	Bond Hearing	Event		05/27/2022-10:00	05/27/2022-10:30	

Financials

Summary					
Fine/Costs:	\$128.75	Total Paid for fine/costs:	\$0.00	Balance Due:	\$128.75

Costs				
Description	Cost Code	Amount	Charge Action	Disbursed Amount
Victim Conviction Surcharge \$100 / \$25	CVSRCH	\$100.00		\$0.00
Collection Fee 3%	CFEE3%	\$3.75		\$0.00
State Assessment	STAASM	\$0.00		\$0.00
Law Enforcement Funding Surcharge \$25	LEFSUR	\$25.00		\$0.00
Fine to General Fund	AFNEGF	\$0.00		\$0.00
Victim Services Asm 38.0013% / 5.7831%	ASMVIC	\$0.00		\$0.00
Fine to State 44%	AFINES	\$0.00		\$0.00

Payments				
Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
None				

Bonds

Bond Information								
Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
2022BD10102013603360	05/27/2022		Haselden	Cash Bond	\$20,000.00	Surety Bond	\$20,000.00	DEF IS TO HAVE NO CONTACT WITH MINORS UNDER AGE 18. IF IN CONTACT WITH MINORS, DEF IS TO BE SUPERVISED (SIGHT AND SOUND)

Post Information								
None								

Appointment of Counsel in Post-Conviction Relief Cases

The Chief Justice has issued an administrative order regarding the appointment of counsel in post-conviction relief cases.

2008-10-06-01

The Supreme Court of South Carolina

RE: Appointment of
Counsel in Post-
Conviction Relief
Cases
Before the Circuit
Court

ADMINISTRATIVE ORDER

In post-conviction relief (PCR) cases, the appointment of counsel is appropriate only when a hearing must be held. Rule 71.1, SCRCP ("If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent."); Richardson v. State, 377 S.C. 103, 659 S.E.2d 493 (2008). I find that in many cases counsel are being appointed when the above standard has not been satisfied.

Further, in a significant number of these cases, the application is ultimately denied as being successive or as being barred by the statute of limitations. The appointment of counsel in such cases places an unnecessary burden on the appointed counsel, and violates the mandate of Rule 608(g), SCACR, that appointments should be minimized. To help address this problem, I find it appropriate to direct the following:

Consistent with Rule 71.1, SCRCP, counsel will not be appointed until the Post-Conviction Relief Section of the Attorney General's Office files its return to the application. In its return, the Attorney General's Office shall clearly state in the caption heading whether it requests that counsel be appointed for the applicant.

If the Attorney General requests the appointment of counsel, counsel shall be appointed for the applicant unless a circuit court judge determines that it is inappropriate to do so. The authority to make the appointments in these cases may be delegated to the Clerk of Court or some other official.

If the Attorney General opposes the appointment of counsel for an indigent applicant, counsel will only be appointed as follows:

40 (1) If the Attorney General asserts that the application is barred as being successive or as being untimely under the statute of limitations, [1] counsel will not be appointed except upon written order of the Chief Judge for Administrative Purposes for the Court of Common Pleas in the circuit. In these cases, the Chief Judge will insure that counsel is only appointed for an indigent applicant when the facts raise a material issue regarding the applicability of the rule forbidding successive applications or the statute of limitations. Cf. Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001) (statute of limitations).

(2) In all other cases in which the State opposes the appointment of counsel, counsel will only be appointed upon written order of a circuit court judge under the standard contained in Rule 71.1, SCRCP.

IT IS SO ORDERED.

s/ Jean H. Toal
JEAN H. TOAL
CHIEF JUSTICE

Columbia, South Carolina
October 6, 2008

[1] S.C. Code Ann. § 17-27-45 (2003).

RULE 71.1
POST-CONVICTION RELIEF ACTIONS

(a) Procedure. The procedure for post-conviction relief is provided by the Uniform Post-Conviction Procedure Act (Act), S.C. Code Ann. §§ 17-27-10 to -120 (1985). The South Carolina Rules of Civil Procedure shall apply to the extent that they are not inconsistent with the Act.

(b) Time and Form of Application. An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected. All applications shall be made on the form set out in the Appendix of Forms. The Office of Court Administration shall insure that an adequate quantity of these forms are available to the circuit court clerks for distribution to persons seeking post-conviction relief.

(c) Independent Action. An application filed under the Act is an independent civil action which should be separately filed and indexed by the clerk of court. The caption in all post-conviction relief actions shall read: *Full Name and Prison number (if any) of Applicant v. State of South Carolina*.

(d) Appointment of Counsel for Hearing. If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent. Counsel shall be given a reasonable time to confer with the applicant. Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.

(e) Burden of Proof. The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.

(f) Filing and Service of Order. The post-conviction relief judge shall submit the signed final order or judgment to the clerk for filing and the clerk of court shall provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP.

(g) Appellate Review; Continuing Representation. A final decision entered under the Act shall be reviewed according to the procedure specified by Rule 243, SCACR. If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.

Note to 1990 Amendment:

This rule is based in part on former Supreme Court Rule 50(1)-(8), and has no counterpart in the Federal Rules.

Note to 2001 Amendments:

These amendments consolidate former Rule 71.1(f) and (g) and change the method of appointment of counsel for indigents on appeal to conform to Rule 602, SCACR.

Note to 2004 Amendment:

The 2004 Amendment clarifies the process for filing and notification of parties of filed orders in post-conviction relief actions.

Amended by Order dated April 28, 2004.

Note to 2007 Amendment:

In 2005, the Office of Appellate Defense became a division of the Office of Indigent Defense. This amendment reflects this organizational change.

Note to 2009 Amendment

References to the South Carolina Appellate Court Rules in Rule 71.1 were amended to reflect changes in the numbering of those rules by Orders of the South Carolina Supreme Court dated January 29, 2009 and April 29, 2009.

CHAPTER 27
Uniform Post-Conviction Procedure Act

SECTION 17-27-10. Short title.

This chapter may be cited as the Uniform Post-Conviction Procedure Act.

HISTORY: 1962 Code Section 17-612; 1969 (56) 158.

SECTION 17-27-20. Persons who may institute proceeding; exclusiveness of remedy.

(A) Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

(2) That the court was without jurisdiction to impose sentence;

(3) That the sentence exceeds the maximum authorized by law;

(4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

(B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

HISTORY: 1962 Code Section 17-601; 1969 (56) 158.

SECTION 17-27-30. Jurisdiction of court.

The court in which, by the Constitution and statutes of this State, original jurisdiction in habeas corpus is vested, may entertain in accordance with its rules a proceeding under this chapter in the exercise of its original jurisdiction and in that event this chapter, to the extent applicable, governs the proceeding.

HISTORY: 1962 Code Section 17-602; 1969 (56) 158.

SECTION 17-27-40. Commencement of proceedings by filing of application.

A proceeding is commenced by filing an application verified by the applicant with the clerk of the court in which the conviction took place. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General.

HISTORY: 1962 Code Section 17-603; 1969 (56) 158.

SECTION 17-27-45. Filing procedures for post-conviction relief applications.

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

HISTORY: 1995 Act No. 7, Part II, Section 40.

SECTION 17-27-50. Form and contents of application.

The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment and sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in Section 17-27-40. Affidavits, records or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument, citations and discussion of authorities are unnecessary. The application shall be made on such form as prescribed by the Supreme Court.

HISTORY: 1962 Code Section 17-604; 1969 (56) 158.

SECTION 17-27-60. Court costs and expenses for indigents.

If the applicant is unable to pay court costs and expenses of representation, including stenographic, printing and legal services, these costs and expenses shall be made available to the applicant in the trial court, and on review, in amounts and to the extent funds are made available to indigent defendants by the General Assembly.

HISTORY: 1962 Code Section 17-605; 1969 (56) 158.

SECTION 17-27-70. Court procedure on receipt of application.

(a) Within thirty days after the docketing of the application, or within any further time the court may fix, the State shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may, when appropriate, issue orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application, the court shall take account of substance, regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(b) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if there exists a material issue of fact.

(c) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

HISTORY: 1962 Code Section 17-606; 1969 (56) 158.

SECTION 17-27-80. Hearing on application; final judgment.

The application shall be heard in, and before any judge of, a court of competent jurisdiction in the county in which the conviction took place. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

HISTORY: 1962 Code Section 17-607; 1969 (56) 158.

SECTION 17-27-90. Grounds for relief.

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

HISTORY: 1962 Code Section 17-608; 1969 (56) 158.

SECTION 17-27-100. Appeals.

A final judgment entered under this chapter may be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.

HISTORY: 1962 Code Section 17-609; 1969 (56) 158; 1999 Act No. 55, Section 24.

SECTION 17-27-110. Rules.

The Supreme Court may adopt such rules as it shall deem necessary to effectuate the purposes of this chapter.

HISTORY: 1962 Code Section 17-611; 1969 (56) 158.

SECTION 17-27-120. Construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

HISTORY: 1962 Code Section 17-610; 1969 (56) 158.

SECTION 17-27-130. Waiver of attorney-client privilege by allegation of ineffective prior counsel; access to files.

Where a defendant alleges ineffective assistance of prior trial counsel or appellate counsel as a ground for post-conviction relief or collateral relief under any procedure, the applicant shall be deemed to have waived the attorney-client privilege with respect to both oral and written communications between counsel and the defendant, and between retained or appointed experts and the defendant, to the extent necessary for prior counsel to respond to the allegation. This waiver of the attorney-client privilege shall be deemed automatic upon the filing of the allegation alleging ineffective assistance of prior counsel and the court need not enter an order waiving the privilege. Thereafter, counsel alleged to have been ineffective is free to discuss and disclose any aspect of the representation with representatives of the State for purposes of defending against the allegations of ineffectiveness, to the extent necessary for prior counsel to respond to the allegation.

In the case of a defendant who has been convicted of a capital offense and sentenced to death, the defendant's prior trial counsel or appellate counsel shall make available to the capital defendant's collateral counsel the complete files of the defendant's trial or appellate counsel. The capital defendant's collateral counsel may inspect and photocopy the files, but the defendant's prior trial or appellate counsel shall maintain custody of their respective files, except as to the material which is admitted into evidence in any trial proceeding.

HISTORY: 1996 Act No. 448, Section 4.

Editor's Note

1996 Act No. 448, Section 1, eff June 18, 1996, provides as follows:

"SECTION 1. This act [consisting of Sections 16-3-21, 17-25-380, 17-27-130, 17-27-150, and 17-27-160] is known and may be cited as the 'South Carolina Effective Death Penalty Act of 1996'."

SECTION 17-27-150. Discovery in post-conviction relief proceeding.

(A) A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

(B) A party in a capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure.

HISTORY: 1996 Act No. 448, Section 5.

Editor's Note

1996 Act No. 448, Section 1, eff June 18, 1996, provides as follows:

"SECTION 1. This act [consisting of Sections 16-3-21, 17-25-380, 17-27-130, 17-27-150, and 17-27-160] is known and may be cited as the 'South Carolina Effective Death Penalty Act of 1996'."

SECTION 17-27-160. Capital case post-conviction relief procedures.

(A) If a defendant has been sentenced to death in South Carolina, he must file his application for post-conviction relief in the county in which he was indicted for the crime resulting in the sentence of death. Upon receipt of the application for post-conviction relief, the clerk of court shall forward the application to the judge who has been assigned to hear the post-conviction relief application. This judge shall maintain control over the expedited consideration of the application pursuant to this section. The judge assigned as the post-conviction relief judge must not be the original sentencing judge. A copy of the application shall be immediately provided to the solicitor of the circuit in which the applicant was convicted and a copy provided to the Attorney General. The filing of the application does not automatically stay any sentence of death.

(B) Upon receipt of the application for post-conviction relief, the counsel for the respondent shall file a return within thirty days after receipt of the application.

If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense. The Supreme Court may promulgate additional standards for qualifications of counsel in capital post-conviction proceedings. The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment. Counsel appointed in these cases shall be compensated from the funding provided in Section 16-3-26 in the same manner and rate as appointed trial counsel, provided that Section 16-3-26(I) shall not apply to counsel appointed in post-conviction relief proceedings. Appointed counsel on appeal from state post-conviction relief cases shall be funded and compensated from the funds established for representation of indigents on appeal by the Office of Appellate Defense pursuant to Chapter 4, Title 17. Nothing in this section shall preclude an out-of-state attorney from appearing pro hac vice.

If counsel is the same person appointed as counsel on appeal, the court shall appoint a second counsel to assist in the preparation of the application for post-conviction relief. If the applicant elects to proceed pro se, any findings made by the court shall be done on the record and in open court concerning the waiver of the assistance of counsel.

(C) Not later than thirty days after the filing of the state's return, the judge shall convene a status conference to schedule a hearing on the merits of the application for post-conviction relief. The hearing must be scheduled within one hundred eighty days from the date of the status conference, unless good cause is shown to justify a continuance.

(D) Within thirty days from the receipt of the transcript, or if the judge requests post trial briefs, within thirty days from the receipt of the post trial briefs, the hearing judge in writing shall make specific findings of fact and state expressly the judge's conclusions of law relating to each issue. This order is a final judgment subject to a motion for rehearing, a motion to alter or amend judgment, a motion for relief from judgment or order, or any other motion as allowed by the South Carolina Rules of Civil Procedure.

(E) In these expedited capital post-conviction relief hearings, a court reporter shall be assigned to take testimony. The transcription of the testimony and record shall be given priority over all other matters concerning the preparation of the record and, upon completion, shall immediately be provided to the parties and the Clerk of the Supreme Court of South Carolina.

HISTORY: 1996 Act No. 448, Section 6.

Editor's Note

1996 Act No. 448, Section 1, eff June 18, 1996, provides as follows:

"SECTION 1. This act [consisting of Sections 16-3-21, 17-25-380, 17-27-130, 17-27-150, and 17-27-160] is known and may be cited as the 'South Carolina Effective Death Penalty Act of 1996'."

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
	)	
Jay L. Cook,	)	CASE NO. 2025-CP-10-01203
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Already Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
 2025 JUN 16 PM12:52
 JULIE J. ARMSTRONG
 CLERK OF COURT

In response to the application for post-conviction relief (PCR) filed by Jay L. Cook, (Applicant), on March 4, 2025, Respondent makes the following return¹:

PROCEDURAL HISTORY

Applicant is currently not incarcerated. On March 11, 2024, Applicant appeared before the Honorable Deadra L. Jefferson, waived indictment to the grand jury, and pled guilty to one count of sexual exploitation of a minor third degree (2024-GS-10-01536).² Public Defender Benjamin A. Mack represented Applicant. Assistant Attorney General Stephen J. Ryan represented the State. Judge Jefferson sentenced Applicant to a sentence of 5 years. Applicant did not appeal.

¹ Respondent's return was due to be filed within 60 days of service. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90-days if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing the Court may fix the time in which the State must respond); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is not mandatory but discretionary with the circuit court, and the circuit court may extend the time for filing).

² In exchange for the plea, the State dismissed seven counts of sexual exploitation of a minor in the third degree and two counts of sexual exploitation of a minor in the second degree.

CURRENT APPLICATION

On March 4, 2025, Applicant timely filed this PCR action alleging he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

- 1) Failing to challenge inadmissible evidence;
- 2) Failing to present a viable defense strategy;
- 3) Did not communicate properly;
- 4) Did not properly advise of rights.

As relief, Applicant requests the court "overturn the verdict completely." Attached to this return and incorporated by reference are the Charleston Clerk of Court records for the underlying convictions, Applicant's records from the South Carolina Department of Corrections, and the Plea Transcript. Respondent reserves the right to file an amended return upon receipt of any additional information.

INEFFECTIVE ASSISTANCE OF COUNSEL / INVOLUNTARY GUILTY PLEA

Respondent requests an evidentiary hearing on Applicant's claim of ineffective assistance of counsel. To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "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 Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985). When reviewing a guilty plea, the Strickland deficiency

prong remains unchanged—Applicant must show counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58–59. To show prejudice, Applicant must show a reasonable probability exists "that, but for counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

The record likely does not refute or disprove Applicant's claims. Therefore, Respondent requests an evidentiary hearing. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "allege specific instances of ineffective assistance of counsel which are not conclusively refuted by the record").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Respondent requests Applicant specify any claims he intends to raise in advance of the hearing. Respondent reserves the right to request a continuance based upon any amendments withheld until the last minute. Respondent further requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent before the hearing. Likewise, Respondent requests all potential evidence and a witness list be sent to Respondent before the hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that result in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Any allegation not expressly admitted, qualified, or explained is hereby denied.

CONCLUSION

WHEREFORE, Respondent requests an evidentiary hearing on Applicant's claims of ineffective assistance of counsel.

Respectfully Submitted,

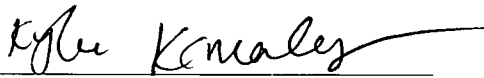
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Deputy Attorney General

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Senior Assistant Deputy Attorney General

DANIELLE DIXON
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Assistant Attorney General

By: 
Kylee Kanealey, Bar No. 107060

ATTORNEYS FOR RESPONDENT
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Post Office Box 11549
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June 11, 2025

Vickie Hall, Legal Assistant
For Respondent

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I N D E X

Description Page No.

THURSDAY, JANUARY 22, 2026

Applicant's Case

JAY L. COOK, APPLICANT (AW)

Direct examination by Ms. Swope 7

Cross-examination by Ms. Kanealey 12

End of Applicant's Case

Respondent's Case

BENJAMIN MACK, ESQUIRE (RW)

Direct examination by Ms. Kanealey 14

Cross-examination by Ms. Swope 21

End of Respondent's Case

Certificate Page 27

1 PROCEEDINGS - JANUARY 22, 2026.

2 MS. KANEALEY: May it please the Court? Kylee Kanealey
3 on behalf of the State. This is the post-conviction relief
4 matter of Jay Cook versus the State, case number
5 2025-CP-10-01203 out of Charleston County. Applicant is
6 currently not incarcerated.

7 On March 11, 2024, Applicant appeared before the
8 Honorable Deadra Jefferson, waived indictment to the grand
9 jury, and pled guilty to one count of sexual exploitation of
10 a minor, third degree.

11 In exchange for this plea, the State dismissed seven
12 counts of sexual exploitation of a minor in the third degree
13 and two counts of sexual exploitation of a minor in the
14 second degree. Public Defender Benjamin Mack represented
15 Applicant, and Assistant Attorney General Stephen Ryan
16 represented the State. Judge Jefferson sentenced Applicant
17 to a sentence of five years, and Applicant did not appeal.

18 On March 4, 2025, Applicant filed this application
19 alleging failing to challenge inadmissible evidence, failing
20 to present a viable defense strategy, did not communicate
21 properly, and did not properly advise of rights. At this
22 time, I'll turn it over to Ms. Swope.

23 THE COURT: Ms. Swope?

24 MS. SWOPE: Yes, your Honor, that -- that is correct.

25 And just for clarity of the record, I would ask the Court to

1 address the difference in sentencing that could have occurred
2 if this case went forward. I've gone over this with my
3 client very -- in very detail that since he is not
4 incarcerated presently, and has served his five years, by my
5 calculations, if they were to be served concurrently, I think
6 it's 100 years. I mean, consecutively, I'm sorry. I don't
7 believe that would occur, but he would certainly be facing
8 more time by far than five years if the plea were to be
9 vacated.

10 THE COURT: Okay. Ms. Kanealey, you said the State
11 dismissed seven counts of sex -- sexual exploitation of a
12 minor, third degree?

13 MS. KANEALEY: Yes.

14 THE COURT: And what was the other?

15 MS. KANEALEY: And then two counts of sexual
16 exploitation of a minor in the second degree.

17 THE COURT: Okay. Thank you. All right. Mr. Cook,
18 would you stand, and raise your right hand, and be sworn?

19 JAY COOK, APPLICANT,

20 sworn:

21 THE CLERK: All right. You may be seated.

22 THE COURT: All right. So Mr. Cook, you filed an
23 application for post-conviction relief. You understand the
24 only relief that this Court can give you is to vacate or set
25 aside your original guilty plea, and then you would go back

1 almost to the beginning where you have all of the charges
2 pending; do you understand that?

3 THE APPLICANT: I understand that.

4 THE COURT: Okay. And so you were originally charged
5 with eight counts of sexual exploitation of a minor in the
6 third degree, and two counts of sexual exploitation of a
7 minor, second degree; is that correct?

8 THE APPLICANT: I believe so.

9 THE COURT: Okay. Ten years. So for each count of
10 sexual exploitation of a minor, you could, if convicted, be
11 imprisoned for ten years; do you understand that?

12 THE APPLICANT: Yes, I understand that.

13 THE COURT: And for sexual exploitation of a minor,
14 second degree -- sorry, my computer is being slow. Right.
15 For each count of sexual exploitation of a minor, second
16 degree, you could receive a sentence no less than two years,
17 but no more than ten years; do you understand that?

18 THE APPLICANT: I do.

19 THE COURT: So if your application for post-conviction
20 relief were to be granted today, if you were to go forward on
21 your case, and let's say I agree with everything you say,
22 then you would go back to the point where you have pending
23 charges, eight counts of sexual exploitation of a minor,
24 third degree, and two counts of sexual exploitation of a
25 minor, second degree; do you understand that?

1 THE APPLICANT: Yes, I do.

2 THE COURT: And so the minimum sentence -- if you were
3 convicted, the minimum sentence you could get would be two
4 years. The maximum sentence you could get would be 100
5 years; do you understand that?

6 THE APPLICANT: Yes.

7 THE COURT: Now, I know you've already served five
8 years, but you could, if convicted, serve 100 years; do you
9 understand?

10 THE APPLICANT: Yes.

11 THE COURT: Do you still wish to go forward with your
12 PCR application?

13 THE APPLICANT: Yes, I do.

14 THE COURT: Okay. Anything else you want me to ask
15 him, Ms. Swope?

16 MS. SWOPE: Nothing, your Honor. We would -- I would
17 call Mr. Cook to the stand, please.

18 THE COURT: All right. Mr. Cook, come on around.
19 She's calling you as your -- the first witness.

20 JAY COOK, APPLICANT,

21 being duly sworn, testified as follows:

22 THE CLERK: All right. Please be seated. Now, please
23 state your full name into the microphone, spelling your last
24 name for the court's record.

25 THE WITNESS: Name is Jay Cook, C-O-O-K.

1 DIRECT EXAMINATION

2 BY MS. SWOPE:

3 Q. Yes, Mr. Cook. As we discussed, you're here today
4 to do your PCR, which is a discussion of your lawyer's
5 conduct, what they did or didn't do in your defense. And the
6 primary thing that we talked about was the plea itself, but
7 you also alleged that he -- that Mr. Mack failed to challenge
8 inadmissible evidence or to establish a viable defense
9 strategy; is that correct?

10 A. That's correct.

11 Q. And would you explain to the Court what you mean
12 by those allegations?

13 A. Can you repeat the first part of that?

14 Q. Sure. Failure to challenge evidence or establish
15 a good defense for you.

16 A. Okay. On -- on May 26, 2022, the Charleston
17 County Sheriff's Department came to the house with a search
18 warrant. That search warrant was never shown to me or my
19 roommate. I told Mr. Mack this, and when I did tell him
20 this, he starts stuttering. He had to go. He was late for
21 another appointment. So he never looked into that
22 allegation.

23 Another thing I told him was how I was literally pulled
24 out of the house, handcuffed, and the cops started asking
25 questions. I -- I later learned that -- that there is a

1 custodial interrogation with ineffective Miranda warnings.

2 Mr. Mack didn't want to hear anything about it.

3 We talked on June 6, 2022. He introduced himself to me
4 stating that he was from the Charleston County Public
5 Defender's Office. He went on to tell me that I was going to
6 be sitting in the county jail for the next 12 months, and
7 after that 12 months, we would do a plea deal where I plead
8 guilty to two counts, eight counts being tossed out. Time
9 served, I go on with life.

10 He told me that on the 6th. On the 7th, we talked
11 about the search warrant, et cetera. And he told me that he
12 would be in contact with me by week's end, which should've
13 been around June 10, 2022. Instead, it took him 16 and a
14 half months to get back with me, which was on October 18,
15 2023. In between that time, I did write him and ask him if
16 he had time to come and talk to me about my case. And that
17 went unheard.

18 Q. Okay.

19 A. And what was the second part?

20 Q. And that goes into -- you didn't feel like -- that
21 he communicated with you properly?

22 A. He didn't at all. I mean, if it takes 16 and a
23 half months to -- to hear from your attorney, something's
24 wrong. That's how I look at it, you know?

25 Q. Okay. And you also said that you didn't feel like

1 he had properly advised you of your rights; is that correct?

2 A. He never advised me of any rights.

3 Q. Okay. And you didn't feel like he came up with a
4 good defense strategy is something else that you said?

5 A. He didn't.

6 Q. Okay.

7 A. If he came up with a good defense strategy, it
8 would've been having the case thrown out because going back
9 to the search warrant, that was done illegally.

10 Q. Okay. And so let's move on to the plea because
11 you and -- you and I have discussed this in detail. When you
12 go through the plea, the Court carries you through questions,
13 and I know that the AG's office is going to cover this, so
14 let's just go on and do that.

15 The Judge asks you questions, "Do you understand?" "Do
16 you do you need more time to talk to your lawyer?" All of
17 those questions, and you answered appropriately to the Court
18 to accept the plea. If you felt like you were not properly
19 informed and you didn't want to take the plea, can you
20 explain to the Court why you did?

21 A. On February 12th, we were supposed to do a plea
22 deal, and I refused to go into the courtroom that day -- what
23 was your question?

24 Q. You answered the questions for the Court --

25 A. Okay, yeah.

1 Q. -- that you wanted to take the plea, and if you
2 didn't want to take the plea, why did you choose to answer
3 the questions in that way?

4 A. Right. I didn't want to do a plea deal to begin
5 with. I wanted to take it to a jury trial. He told me, "No,
6 it's not going to go to jury trial." On March 11th, while I
7 was in the basement of the courthouse, he made a comment of,
8 "You plead guilty to this, you'll be home by May 1st." And I
9 told him again that I didn't want to do a plea, I wanted a
10 jury trial.

11 And at that time, he told me that if I don't take the
12 plea, if I don't make him look good, he's going to get a
13 couple of people from the county to beat the bloody pulp out
14 of me. So -- so when you're standing there weighing the
15 options, I mean, what do you do? What do you do? And -- and
16 we were already in court because I wanted to dismiss him as
17 counsel anyway, and that was in February 2024, the Judge
18 would not allow it.

19 Q. Okay. Is there anything else regarding your
20 representation that you wanted to bring to the Court's
21 attention?

22 A. Yes. On the conversation that we had, October
23 18th, I told him that I attempted to file a 17-23-90 because
24 there was no indictment handed down at that time. He told me
25 that, in fact, there was an indictment handed down and that

1 the 17-23-90 was not going to benefit me at all.

2 Q. Okay.

3 A. I also asked him that day why he hasn't asked for
4 a bond reduction. And he, kind of, chuckled and he says,
5 "They don't give bonds to guilty people, and you are guilty."
6 I ended the conversation that day.

7 Q. Okay. Is there anything else that you want to
8 bring to the Court's attention?

9 A. Well, one of the things -- and I know a lot of the
10 lawyers don't go by it today, but I do know that there's a --
11 there's a -- criminals procedure, 17-19-10, which outlines
12 that an offense must be prosecuted based on a grand jury
13 indictment. Meaning a grand jury must formally charge
14 someone with a crime before they can be prosecuted in court.
15 Essentially, specifying that a grand jury is required to
16 bring charges in criminal proceedings within the State of
17 South Carolina.

18 Q. Yes.

19 A. During that court proceeding, where the Judge
20 asked me -- let me back up just a little bit. When I came
21 into the courtroom that day on March 11th, the first thing
22 Mr. Mack told me was, "They didn't hand down a -- an
23 indictment against you."

24 Now, usually in court cases when an indictment is not
25 handed down, they cannot move forward because an indictment

1 has all of the facts wrapped up in it. When a Judge asked me
2 do I waive my rights to a grand jury? I wasn't thinking at
3 that time, and I said "Yes." But legally, I feel as though
4 she didn't have a right to ask that question because an
5 indictment was not handed down. She should have dismissed
6 all the charges.

7 MS. SWOPE: Okay. Your Honor --

8 THE WITNESS: That's what -- that's what has happened
9 in other cases that I've read on.

10 MS. SWOPE: Okay. Your Honor, I don't believe I have
11 anything further.

12 THE COURT: Yes, ma'am?

13 MS. KANEALEY: May it please the Court?

14 CROSS-EXAMINATION

15 BY MS. KANEALEY:

16 Q. Okay. Yeah. Just -- so you did tell the Court
17 that you wished to waive presentment to the grand jury?
18 Waive the indictment?

19 A. That -- that was on the paperwork that I seen from
20 that court day, yeah.

21 Q. Okay. And at the plea hearing, the Judge read all
22 of your rights to you, correct?

23 A. I -- I believe so.

24 Q. And you said you understood those rights?

25 A. I believe so.

1 Q. Okay. And you said you understood that you were
2 giving up those rights?

3 A. I may have said that. A lot of the stuff that the
4 Judge was saying, I could not understand or hear.

5 Q. But you told her you understood, correct?

6 A. Yes, I did.

7 Q. Okay.

8 A. Yes.

9 Q. And then you told her that you understood
10 specifically you were giving up the right to present a
11 defense strategy and to challenge evidence, correct?

12 A. I -- I believe so.

13 MS. KANEALEY: Nothing further, your Honor.

14 THE COURT: Anything, Ms. Swope?

15 MS. SWOPE: Nothing further, your Honor.

16 THE COURT: Okay, thank you. You can step down and go
17 sit back next to your attorney. Any additional witnesses,
18 Ms. Swope?

19 MS. SWOPE: None, your Honor.

20 THE COURT: Ms. Kanealey?

21 MS. KANEALEY: The State would call Ben Mack to the
22 stand.

23 BENJAMIN MACK, ESQUIRE,

24 being duly sworn, testified as follows:

25 THE CLERK: Please be seated. Now, please state your

1 full name into the microphone, spelling your last name for
2 the court's record.

3 THE WITNESS: My name is Ben Mack. Last name is spelt
4 M-A-C-K.

5 MS. KANEALEY: May it please the Court?

6 THE COURT: Yes, ma'am.

7 DIRECT EXAMINATION

8 BY MS. KANEALEY:

9 Q. Mr. Mack, how long have you been practicing the
10 law?

11 A. I've been practicing for ten years at the Public
12 Defender's office for the entirety of that time.

13 Q. Okay. And how many times roughly did you meet
14 with Applicant?

15 A. If I may reference my notes, I signed a Rule 5 and
16 Notice of Appearance in June 2022, that was June 6, 2022.
17 And I videoconferenced with Mr. Cook that same day. That
18 day, we discussed the charges against him, the sentencing
19 range in which he was facing, mandatory minimums, what a
20 discovery request entails, what it means to be facing violent
21 offenses, and so forth.

22 If I remember correctly, our call ended before we could
23 finish the discussion, so I set up another call with him the
24 following day where we discussed the facts of the case, the
25 search warrant associated with the case, how these cases are

1 fairly rock solid based on ICAC reporting and internet data
2 and metadata on your computers.

3 And I suggested to him, given some details of his
4 upbringing and past, that he meet with a psychosexual
5 therapist and a forensic psychiatrist for the purpose of
6 addressing those issues and helping me better understand
7 those issues. He agreed to that, and I subsequently made
8 arrangements for those meetups to happen.

9 Q. And --

10 A. Should I continue? There are more.

11 Q. Oh, sorry. Did you have adequate time to meet
12 with him?

13 A. So after those initial meetings, Mr. Cook met with
14 Dr. Bill Burke on July 14, 2022, so about a month after our
15 meetup, and a report was provided me -- provided to me after
16 that meetup. I should also say that during our initial
17 meeting, those meetings that occurred on the 6th and 7th of
18 June, we discussed preliminary hearings and what to expect
19 from them in these particular cases and how they work.

20 And if I remember correctly, we left it during those
21 meetings that I would circle back with him once his
22 preliminary hearing is on the docket and we have the
23 discovery. We sent the discovery to him on December 12,
24 2022, and that would include all the information that the
25 State would use against him, including his rap sheet. And I

1 took a vacation in January 2023, I actually went to Argentina
2 for three weeks. Had a backlog of cases after that. Didn't
3 meet with Jay Cook until April 18, 2023, about preliminary
4 hearing preparations, or at least attempted to meet with him.

5 He actually refused to speak with me. The
6 videoconference was set up. He would have been notified of
7 that. I always do a follow-up with the visitation desk at
8 the jail about the reason for people not showing up,
9 wondering if it's a technical difficulty or illness, and they
10 told me that he refused my note of that in the file.

11 So we proceeded to the preliminary hearing the
12 following day, April 19, 2023, where Officer Bowen testified,
13 and I made a motion to dismiss the charges based on his
14 testimony, and that motion was denied. Subsequently, on --
15 in October, so about six months later, I attempted to meet
16 with Jay Cook in order to discuss plea preparations.

17 I believe he had sent me letters saying that he wanted
18 to hear the post-Miranda statement that he gave to police,
19 which was recorded as testified to by Detective Bowen, and
20 which was in the discovery and documented by his incident
21 reports, in addition to a Miranda card associated -- oh,
22 documenting Mr. Cook's waiver of rights. And I set up a
23 meeting two days later between Mr. Cook and my investigator
24 to review the recording, which was fairly lengthy, if I
25 remember correctly, about 30 minutes to an hour, and Jay Cook

1 refused that meeting.

2 At the same time, a grievance was received by me from
3 the Office of Disciplinary Counsel at the Supreme Court
4 expressing Mr. Cook's concerns for my representation.

5 Subsequently, on January 4, 2024, I set up another conference
6 with Jay Cook, and he refused to speak with me. And about a
7 month later, we addressed his motion to relieve me, where, I
8 think, we were still recovering from the COVID-19 pandemic.

9 We did hearings at the jail where they essentially put
10 me in solitary confinement to wait for the hearing. And at
11 that hearing, Judge Deadra Jefferson presiding, Jay Cook
12 withdrew his motion to relieve me, and we proceeded to the
13 plea for the plea offer as previously discussed. Ahead of
14 the plea hearing, on March 11, 2024, I met with Jay Cook two
15 times via videoconference to discuss the plea deal, and we,
16 of course, met in the lockup chamber before the jail the day
17 of the hearing.

18 So do I think I had an adequate time to meet with Jay
19 Cook? To -- I think I made myself adequately available. I
20 wish I could have spoken with him more. I wish he hadn't
21 refused those meetings with me so that we could have
22 addressed some of these issues. I suspect that because his
23 grievance was pending against me with ODC, he didn't want to
24 speak with me.

25 Q. And can -- can you give us a brief overview of the

1 evidence the State had against him?

2 A. Sure. So I -- I mentioned the recorded statement
3 of his confession in Detective Bowen's patrol car upon
4 execution of the search warrant, in addition, the Miranda
5 card in that statement. Mr. Cook admitted to possessing
6 child porn, and I believe downloading it or distributing it,
7 I can't -- I can't exactly remember. And -- but the offense
8 applies to the same action. The same offense applies to the
9 same action.

10 And if I remember correctly, they -- the AG's office
11 was in possession of about 1,000 images that they found on
12 Mr. Cook's electronic devices in his residence that he
13 claimed ownership of.

14 Q. And did you see any issues with the search
15 warrant?

16 A. I did not because of the Miranda, which was
17 properly given and recorded at the outset of the interview
18 between Detective Bowen and Mr. Cook, and then his signature
19 on the Miranda waiver form.

20 Q. And did Applicant have any defenses?

21 A. So he asked me -- oh, he initially asserted a -- a
22 defense that Charleston County, which was the department
23 which made the arrest in the case, for which Detective Bowen
24 works for, was out of their jurisdiction because his
25 residence wasn't located in Charleston County. We looked

1 into that for him and acquired his tax records and DMV
2 records, and both of those records showed that Mr. Cook, in
3 fact, lived in Charleston County. He paid taxes there and
4 had his vehicle registered there.

5 Q. Did Applicant ever indicate to you that he wanted
6 to go to trial?

7 A. He did initially, and a large part of my
8 representation was trying to discourage it, given the weight
9 of the evidence. I've handled many child porn cases with the
10 Charleston County Public Defender's Office, and very few --
11 based on my research and understanding of the cases across
12 South Carolina, very few cases go to trial. Maybe aware of
13 one or two, and they did not end well for the defendant.
14 Given the amount of charges that could have been brought
15 against Mr. Cook, he would have, as the Judge discussed with
16 him, been facing a significant amount of time. And --

17 Q. And did he -- oh, sorry. Continue.

18 A. As far as the plea deal is concerned, it was
19 offered to him as an alternative. He could plead to one
20 count of criminal exploitation of a minor second degree,
21 which, as the Judge stated, carries a mandatory minimum of
22 two years to ten years.

23 Or he could plead to criminal sexual exploitation of a
24 minor, third degree, which carries zero to ten, with a
25 negotiated sentence of five years. I explained to Mr. Cook

1 that the second option was likely the best given the amount
2 of time that he had logged, which at the time of the plea was
3 655 days.

4 And -- meaning he would -- upon his plea, likely only
5 serve six to nine months at 65 percent, given the third
6 offense -- oh, the third degree is a parolable offense. And
7 it's a nonviolent offense, which means he would be housed
8 with nonviolent offenders.

9 The second degree offense, which would've been an open
10 plea, is a violent offense, so he would've been housed with
11 violent offenders, which typically doesn't go well for guys
12 who are on the sex offender registry. And it is a
13 non-parolable offense, meaning if he received -- meaning he
14 would serve any time at 85 percent. So if he received five
15 years upon a plea to a second degree offense, then he would
16 be doing more time on the second degree than he would the
17 third degree.

18 Q. And did you discuss with him the rights he was
19 giving up by pleading guilty?

20 A. Yes, of course. I -- I always discuss that
21 typically the day before a plea during the videoconference,
22 and then cover it again when I've been provided the
23 sentencing sheet in lockup, explaining pretty much line by
24 line what the sentencing sheet -- sentencing sheet means. In
25 particular in this case, the sentencing sheet did not -- or

1 stated that Jay Cook would be waiving his right to have his
2 case presented to the grand jury.

3 I explained to him that the grand jury's pretty much a
4 rubber stamp in South Carolina as far as the defendant's
5 concerned. It's more of a procedure for the state to get
6 charges correct. And part of the reason he didn't have his
7 case indicted was because I was trying to prevent an
8 indictment from being brought against him so that he could,
9 in fact, have a preliminary hearing in this case. Explaining
10 to him that if his case had been indicted, then he wouldn't
11 get that preliminary hearing.

12 Q. And did you ever tell Applicant that if he did not
13 plead, that you would have people beat the bloody pulp out of
14 him?

15 A. Of course not.

16 Q. And was it his decision to plead?

17 A. Yes. Ultimately, it was his decision after I
18 explained the two options to him and, in detail, Miranda law.
19 I think I even actually provided him with cases on Miranda
20 and duress at the jail. Printed copies.

21 MS. KANEALEY: Nothing further, your Honor.

22 THE COURT: Cross-examination?

23 MS. SWOPE: Yes, your Honor. One moment, please.

24 CROSS-EXAMINATION

25 BY MS. SWOPE:

1 Q. Mr. Mack, you mentioned going over his rap sheet
2 with him, and that could be raised at trial; did I get that
3 correct?

4 A. No. I -- I actually mentioned that included in
5 the discovery would be his rap sheet.

6 Q. Okay.

7 A. But there -- I guess in his particular case, there
8 was not one --

9 Q. Okay. That's --

10 A. -- because he didn't have a criminal record.

11 Q. That was my understanding so I just wanted to be
12 clear.

13 A. Yeah, sorry about that.

14 Q. Okay. No, I -- I probably misunderstood. I just
15 wanted to be clear. And -- Mr. Cook testified to concerns
16 regarding the -- the search warrant, and that he felt that
17 the search warrant was inappropriate or too general. Can --
18 can you address your analysis of the search warrant and --
19 and the decisions you made on that, or was that part of your
20 request for a dismissal at the prelim?

21 A. So the -- I believe the request for a dismissal at
22 the prelim was just a -- a general motion to dismiss based on
23 a lack of probable cause, not --

24 Q. Okay.

25 A. -- based on the quality of the search warrant.

1 But if I -- if I remember correctly, without having the
2 search warrant in front of me, the search warrant was based
3 on the ICAC hit. So internet watch dogs basically alerted
4 the Charleston County Police Department to Jay Cook's
5 internet activity on a computer located where -- located at
6 the residence where Mr. Cook was living.

7 Q. Did you have any concerns that the warrant wasn't
8 specific as to an area of the house, that it was general?

9 A. I did not -- don't -- I don't think it matters. I
10 mean, he -- he did have a roommate, but given the confession,
11 I don't think it made a difference.

12 Q. And as to the confession, was he Mirandized --
13 according to the -- the records that you were given, was he
14 Mirandized before or after his statements?

15 A. He was Mirandized before.

16 Q. And that's reflected in the discovery material
17 that you received, obviously, you weren't present?

18 A. Yes, and that I eventually showed to him
19 personally. When he reviewed -- refused to meet with my
20 investigator, I believe in the lockup station, we reviewed
21 his statement together.

22 MS. SWOPE: Okay. Your Honor, I don't believe I have
23 anything further.

24 THE COURT: Any re-direct?

25 MS. KANEALEY: Nothing from the State, your Honor.

1 THE COURT: All right. Thank you, sir. You may step
2 down.

3 THE WITNESS: Thank you, Judge.

4 THE COURT: Any additional witnesses?

5 MS. KANEALEY: No, your Honor.

6 THE COURT: Ms. Swope, let me hear -- any reply? I'm
7 sorry.

8 MS. SWOPE: None, your Honor. I think the testimony
9 speaks for itself.

10 THE COURT: Okay. Do you not wish to make argument?

11 MS. SWOPE: Mr. Cook has indicated to me, and he
12 indicated on the stand, that he was very overwhelmed. He
13 didn't understand what was happening, and he felt very
14 strongly that Mr. Mack should have challenged the sufficiency
15 and the lack of specificity in the warrant, and that was not
16 done. From legal arguments, I think that that's the most
17 important thing for appellate purposes, was that he argues
18 that the warrant should have been challenged and was not.

19 THE COURT: Okay. Yes, ma'am?

20 MS. KANEALEY: Briefly, your Honor. The Applicant
21 failed to meet his burden under Strickland. He did not prove
22 deficiency or prejudice. As far as the allegation, Counsel
23 failed to challenge any admissible evidence, there was no
24 evidence admitted. Applicant pled guilty.

25 Same with the search warrant issue. Counsel testified

1 he saw no issues with the search warrant. And for failing to
2 present a viable defense strategy, again, Applicant chose to
3 plead guilty instead of proceeding to trial and presenting a
4 defense.

5 Counsel testified he met with Applicant and went over
6 Applicant's rights with him in the discovery. And further,
7 the plea transcript reflects the Court did as well, and
8 Applicant told the Court that he understood those rights.

9 THE COURT: Anything further, Ms. Swope?

10 MS. SWOPE: Nothing, your Honor.

11 THE COURT: The Court agrees the Applicant has failed
12 to show any deficiency or any prejudice. You -- in
13 particular, you cannot show that there was any deficiency in
14 Counsel's performance for failing to challenge a search
15 warrant when the Court does not have before it the search
16 warrant to make that determination. I don't know that there
17 was a lack of specificity. I've never seen it, don't know
18 anything about it, and Counsel testified he exercised
19 professional judgment, chose not to challenge it, found no
20 deficiencies with it.

21 Further, there can -- there has been no showing of any
22 prejudice resulting from any of the Counsel's strategic
23 decisions or professional advice. That, coupled with the
24 plea transcript and Applicant's responses to the Court at the
25 time of the plea, demonstrate that the application with

1 post-conviction relief should be denied. The case is
2 dismissed, and I'll ask the Attorney General's Office for a
3 proposed order within 20 days.

4 MS. KANEALEY: Yes, your Honor.

5 THE COURT: Thank you.

6 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
7 11:42 A.M.)

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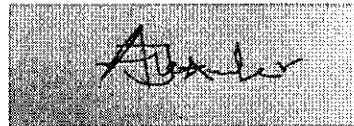
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CERTIFICATE OF TRANSCRIBER

I, JACKSON ALEXANDER, a certified transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9 of Charleston County, South Carolina, on January 22, 2026.

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

May 25, 2026.

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'J. Alexander' or similar, written in a cursive style.

JACKSON ALEXANDER

Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jay L. Cook,

Applicant,

V.

State of South Carolina,

Respondent.

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

) CASE NO. 2025-CP-10-01203

ORDER OF DISMISSAL

FILED

FEB 11 2026

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

This matter comes before the Court by way of Jay Cook's (Applicant's) application for post-conviction relief (PCR) filed on March 4, 2025. On January 22, 2026, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Jocelyn Newman. Applicant was present and represented by Denise G. Swope, Esquire. Assistant Attorney General Kylee Kanealey represented Respondent. Applicant proceeded forward on the allegations in his application. Applicant testified on his own behalf. Respondent presented the testimony of Benjamin Mack, Esquire.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is currently not incarcerated. On March 11, 2024, Applicant appeared before the Honorable Deadra L. Jefferson, waived indictment to the grand jury, and pled guilty to one

count of sexual exploitation of a minor, third degree (2024-GS-10-1536).¹ Public Defender Benjamin A. Mack represented Applicant. Assistant Attorney General Stephen J. Ryan represented the State. Judge Jefferson sentenced Applicant to a sentence of 5 years. Applicant did not appeal.

CURRENT APPLICATION

On March 4, 2025, Applicant timely filed this PCR action alleging he is being held in custody unlawfully based on the following allegations of ineffective assistance of counsel:

- 1) Failing to challenge inadmissible evidence;
- 2) Failing to present a viable defense strategy;
- 3) Did not communicate properly;
- 4) Did not properly advise of rights.

As relief, Applicant requests the court "overturn the verdict completely."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the records from this PCR action. This Court has also had the opportunity to observe the witnesses presented at the hearing, to closely pass upon their credibility, and to weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel/ Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel,

¹ In exchange for the plea, the State dismissed seven counts of sexual exploitation of a minor in the third degree and two counts of sexual exploitation of a minor in the second degree.

the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 117-18, 386 S.E.2d at 625. When reviewing a guilty plea, the Strickland deficiency prong remains unchanged – Applicant must show that counsel's representation fell below an objective standard of reasonableness. Hill, 474 U.S. at 58-59. To show prejudice, Applicant must show a reasonable probability "that, but for counsel's [alleged] errors, he would not have pled guilty and would have insisted on going to trial." Id. at 59. To be knowing and voluntary, the defendant must be advised of the constitutional rights he is waiving, including the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. Boykin, 395 U.S. at 243.

Failing to Challenge Inadmissible Evidence

Applicant alleged Counsel's representation was constitutionally ineffective for failing to challenge inadmissible evidence. This Court finds this allegation is without merit.

As an initial matter, Applicant pled guilty and therefore there was no evidence admitted that would warrant a challenge. Nevertheless, at the hearing Applicant alleged there was issues with the search warrant. Counsel *credibly* testified he did not see any issues with the search

warrant. Further, Applicant did not present the alleged defective search warrant at the evidentiary hearing. Applicant has failed to prove deficiency and prejudice and therefore this claim is denied.

Failing to Present a Viable Defense Strategy

Applicant alleged Counsel's representation was constitutionally ineffective for failing to present a viable defense strategy. This Court finds this allegation is without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Applicant did not present what defense strategy counsel should have allegedly pursued had he gone to trial. Applicant failed to prove Counsel was deficient. Further, at the plea hearing, Applicant told the Judge he understood that he was giving up the right to present any defense by pleading guilty. (Plea Tr. p. 10). Applicant has failed to prove deficiency and prejudice, and therefore, this claim is denied.

Failing to Properly Communicate

Applicant alleged Counsel's representation was constitutionally ineffective for failing to

properly communicate. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). “Brevity of time spent in consultation, without more, does not establish that counsel was ineffective,” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding that it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Easter) (“First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation.”). An applicant must present evidence to show how additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500-01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997)).

Counsel *credibly* testified that he discussed the discovery, the charges he faced, violent offenses, sentencing ranges, the facts, Applicant’s statement and the search warrant with Applicant. Counsel *credibly* testified he made himself adequately available to meet with Applicant. This Court

finds Applicant has failed to prove Counsel was deficient. Further, Applicant failed to prove how additional meetings with Applicant would have resulted in a different outcome and thus, failed to prove prejudice. Applicant has failed to prove deficiency and prejudice and therefore this claim is denied.

Failing to Properly Advise of Rights

Applicant alleged Counsel's representation was constitutionally ineffective for failing to properly advise Applicant of his rights. This Court finds this allegation is without merit. Trial Counsel *credibly* testified he discussed the rights Applicant was giving up by pleading guilty with Applicant. Further, Applicant told the plea court he understood his rights and that he understood he was giving up those rights. (Plea Tr. p. 10). Applicant has failed to prove deficiency and prejudice and therefore this claim is denied.

Grand Jury Indictment

At the evidentiary hearing Applicant additionally alleged his indictment was invalid because it was not presented to the grand jury. This Court finds this allegation is without merit. Applicant told the plea court he wished to waive presentment of the indictment. (Plea Tr. p. 7). Therefore, this Court finds Applicant waived presentment of the indictment and this claim is denied.

CONCLUSION

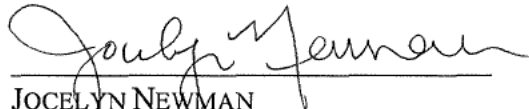
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE.**

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. 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 PCR. Rule 71.1(g), SCRCR, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6th day of February, 2026.


 JOCELYN NEWMAN
 Presiding Judge
 Ninth Judicial Circuit

Columbia, South Carolina

WITNESSES

Jason Bowen – Charleston Sheriff

DOCKET NO. 2024-GS-10- 01536

The State of South Carolina

County of Charleston

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

Defendant

COURT OF GENERAL SESSIONS

February 2024 TERM

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

ARREST WARRANT NUMBER

2022A1010202810

THE STATE

vs.

JAY COOK
D.O.B. [REDACTED]

Defendant

Witness:

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

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Indictment for
**SEXUAL EXPLOITATION OF A MINOR,
THIRD DEGREE**

SC Code: 16-15-410(A)
CDR Code: 0381

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

INDICTMENT

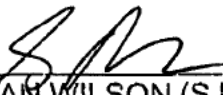
SEXUAL EXPLOITATION OF A MINOR,
THIRD DEGREE

At a Court of General Sessions, convened on February, 2024, the
Grand Jurors of Charleston County present upon their oath:

That Jay Cook on or about May 26, 2022, did commit the crime of Sexual
Exploitation of a Minor, Third Degree. To wit, while knowing the character or content of
the material, did possess in a digital file titled "44212.jpg" material that contains a visual
representation of a minor engaging in sexual activity or depicted in a state of sexually
explicit nudity, in the County of Charleston, as defined by South Carolina Code Section
16-15-375(5), in direct violation of Section 16-15-410(A) of the South Carolina Code of
Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (SJR)
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston

STATE

VS.

INDICTMENT/CASE#: 2024 -GS- 10 - 01536AKA: Jay Cook

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

2022 A1010 202810May 26, 202716-15-410 (A)0381

SENTENCE SHEET

Neg 5yrs Active

Race: W Sex: M Age: 61
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#* [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Sexual Exploitation of a Minor, Third DegreeIn violation of § 16-15-410 of the S.C. Code of Laws, bearing CDR Code # 0381☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. JC (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 101351
Assistant Attorney General SC Bar # [REDACTED][Signature] 102068
Attorney for Defendant SC Bar # [REDACTED]WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The sentence shall run

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

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

STATE VS. Day CookINDICTMENT/CASE#: 2024 -GS- 10 - 01536**SPECIAL CONDITIONS:**☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

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

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

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

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

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

Clerk of Court/Deputy Clerk: C. J. Bickett
Court Reporter: Jamie BickettPresiding Judge: [Signature]
Judge Code: 2128
Sentence Date: 3/11/2024