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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

JAMES MATTHEWS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-210671

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 06-GS-18-1679

versus

)
)
) TRANSCRIPT OF RECORD

JAMES MATTHEWS,

)
) DATE:

DEFENDANT

)
) AUGUST 7, 2007
)

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

SUSAN WILLIAMS, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

KEN COOPER, ESQUIRE
PUBLIC DEFENDER
FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
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E X H I B I T S

NONE

1 DATE:
2 AUGUST 7, 2007

3 THE COURT: ALL OF THE REST OF
4 YOU, IF YOU'RE THINKING ABOUT PLEADING GUILTY I WANT
5 YOU TO STAND WHERE I CAN EXPLAIN TO YOU YOUR
6 CONSTITUTIONAL RIGHTS. IF YOU HAVEN'T SIGNED UP THAT
7 DOESN'T MATTER. IF YOUR LAWYER IS NOT HERE, THAT
8 DOESN'T MATTER. YOU CANNOT PLEAD GUILTY UNLESS I
9 EXPLAIN TO YOU YOUR CONSTITUTIONAL RIGHTS. YOU DON'T
10 HAVE TO PLEAD GUILTY BUT YOU'VE GOT TO HAVE YOUR
11 RIGHTS BEFORE YOU CAN PLEAD GUILTY, AND I'D LIKE TO DO
12 THAT TO EVERYBODY RIGHT NOW. SO, ALL OF YOU PLEASE
13 STAND.

14 NOW, IS THERE ANYBODY OUT HERE WHO
15 MIGHT PLEAD GUILTY THIS AFTERNOON? IF YOU ARE,
16 WHETHER YOU'VE SIGNED UP OR NOT I NEED YOU TO STAND UP
17 RIGHT NOW SO I CAN EXPLAIN TO YOU YOUR CONSTITUTIONAL
18 RIGHTS. ALRIGHT. PLEASE RAISE YOUR RIGHT HAND.
19 (Whereupon, James Matthews,
20 along with other defendants,
21 is duly sworn.)

22 THE COURT: ALRIGHT, YOU CAN PUT
23 YOUR HANDS DOWN BUT REMAIN STANDING. I WANT TO
24 EXPLAIN TO YOU THREE RIGHTS THAT YOU HAVE TO GIVE UP
25 IF YOU WANT TO PLEAD GUILTY.

1 THE FIRST OF THESE IS YOUR RIGHT
 2 TO HAVE THE GRAND JURY CONSIDER YOUR CHARGES BEFORE
 3 YOU DECIDE WHETHER OR NOT TO PLEAD GUILTY. THE GRAND
 4 JURY IS EIGHTEEN CITIZENS WHICH MEET HERE IN THE
 5 COURTHOUSE EACH MONTH BEFORE COURT. WHEN THEY MEET
 6 SOMEONE WHO IS FAMILIAR WITH THE CHARGES AGAINST YOU
 7 AND THE EVIDENCE THE STATE HAS AGAINST YOU WOULD
 8 APPEAR BEFORE THOSE EIGHTEEN PEOPLE AND TELL THEM WHAT
 9 THAT EVIDENCE IS. THAT IS USUALLY A POLICE OFFICER OR
 10 A DETECTIVE, BUT IT'S SOMEBODY WHO KNOWS ABOUT YOUR
 11 CASE. ONCE THOSE EIGHTEEN PEOPLE HEAR THAT REPORT
 12 THEY TAKE A VOTE, AND AT LEAST TWELVE OF THEM HAVE TO
 13 DECIDE THAT THERE IS SUFFICIENT EVIDENCE AGAINST YOU
 14 TO BRING YOU TO TRIAL. OTHERWISE, WE CAN'T EVEN
 15 PROCEED WITH A GUILTY PLEA. NOW, MOST OF YOUR CASES
 16 HAVE ALREADY BEEN TO THE GRAND JURY. IF YOURS HAS NOT
 17 I WILL TELL YOU AND YOU CAN DECIDE WHETHER YOU WANT TO
 18 WAIT AND SEE WHAT THE GRAND JURY MIGHT DO BEFORE YOU
 19 DECIDE WHETHER OR NOT TO PLEAD GUILTY, OR YOU CAN GIVE
 20 UP THAT RIGHT AND WE CAN MOVE FORWARD TODAY.

21 THE SECOND RIGHT YOU HAVE IS YOUR
 22 RIGHT TO REMAIN SILENT. THAT IS YOUR RIGHT TO SAY
 23 NOTHING AT ALL ABOUT THESE CHARGES. YOU CANNOT BE
 24 FORCED TO TESTIFY AGAINST YOURSELF. BUT WHEN YOU
 25 PLEAD GUILTY YOU GIVE UP THAT RIGHT IN ORDER TO ADMIT

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LAISEN BOND FORM A

1 THE TRUTH OF THE CHARGES AGAINST YOU.

2 AND FINALLY, YOU HAVE A RIGHT TO A
3 JURY TRIAL. THAT IS YOUR RIGHT TO HAVE A JURY
4 DETERMINE WHETHER OR NOT YOU ARE, IN FACT, GUILTY OF
5 THESE CHARGES BEYOND A REASONABLE DOUBT. A JURY WOULD
6 BASE ITS DECISION ON THE TESTIMONY AND THE EVIDENCE
7 PUT UP BY THE STATE'S WITNESSES. YOUR ATTORNEY COULD
8 CROSS-EXAMINE OR QUESTION THOSE WITNESSES. HE COULD
9 CALL WITNESSES ON YOUR OWN BEHALF AND PUT ANY DEFENSE
10 YOU MIGHT HAVE TO THESE CHARGES. YOU WOULD BE
11 PRESUMED TO BE INNOCENT IF YOU HAD A JURY TRIAL. THE
12 BURDEN WOULD BE ON THE STATE TO CONVINCe ALL TWELVE
13 JURORS OF YOUR GUILT.

14 NOW, IF YOU HAVE ANY QUESTIONS
15 ABOUT ANY OF THESE RIGHTS I'LL BE GLAD TO ANSWER THOSE
16 QUESTIONS FOR YOU WHEN I TAKE YOUR PLEA A LITTLE
17 LATER.

18 THANK YOU VERY MUCH, YOU MAY BE
19 SEATED.

20 (Whereupon other pleas are
21 taken and then this defendant's
22 plea is taken as follows)

23 THE COURT: YES, MA'AM.

24 SOLICITOR WILLIAMS: STANDING
25 BEFORE YOU, YOUR HONOR, IS JAMES MATTHEWS. HE'S

1 CHARGED WITH CRIMINAL SEXUAL CONDUCT WITH A MINOR.
 2 AND ALSO PRESENT IN THE COURTROOM IS THE MOTHER OF THE
 3 VICTIM, HER NAME IS -- IS THE MOTHER,
 4 AND THE VICTIM'S NAME IS .. AND THE
 5 STATE'S RECOMMENDATION IS A TEN YEAR JAIL SENTENCE.

6 THE COURT: ALRIGHT. IS THIS --
 7 THIS THE ONE WE'RE GOING TO PLEAD TODAY AND SENTENCE
 8 TOMORROW?

9 MR. COOPER: NO, SIR.

10 SOLICITOR WILLIAMS: NO, YOUR
 11 HONOR.

12 MR. COOPER: NO, SIR, THAT WOULD
 13 BE MR. GLOVER.

14 THE COURT: ALRIGHT.

15 (Whereupon, James Matthews,
 16 having already been previously
 17 duly sworn, testifies as follows)

18 (NOTE: Blank lines on this page do not indicate any
 19 part of record has been omitted. Headers on testimony
 20 pages and hard page breaks between testimony are now
 21 required by the Court. See next ensuing page for
 22 sequential continuation of record.)

EXAM - JAMES MATTHEWS BY THE COURT

1 EXAMINATION OF JAMES MATTHEWS

2 BY THE COURT:

3 Q. MR. MATTHEWS, HOW OLD ARE YOU, SIR?

4 A. FIFTY-NINE.

5 Q. HOW FAR DID YOU GO IN SCHOOL?

6 A. RIGHT AROUND ABOUT THE SIXTH GRADE.

7 Q. HAVE YOU EVER BEEN TREATED FOR DRUG ABUSE,
8 ALCOHOL ABUSE OR MENTAL ILLNESS?

9 A. YES, I'VE BEEN IN PRISON BEFORE, I'VE BEEN
10 TREATED FOR IT.

11 Q. ALRIGHT. HOW LONG AGO WAS THAT?

12 A. THAT WAS BACK IN NINETY-NINE AND TWO THOUSAND AND
13 TWO THOUSAND AND THREE.

14 Q. ALRIGHT. HAVE YOU HAD ANY DRUGS, ALCOHOL,
15 MEDICATION OR ANYTHING IN THE LAST TWENTY-FOUR
16 HOURS THAT WOULD KEEP YOU FROM UNDERSTANDING
17 WHAT'S GOING ON IN COURT TODAY?

18 A. I HAVE "CRANITITIS", I TAKE THEM PILLS BUT I
19 DON'T THINK THEY'RE GOING TO AFFECT ME FOR WHAT'S
20 HAPPENING.

21 Q. IT DOESN'T AFFECT YOU.

22 (NOTE: Blank lines on this page do not indicate any
23 part of record has been omitted. Headers on testimony
24 pages and hard page breaks between testimony are now
25 required by the Court.)

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ASFF LUPUD FORH/A

EXAM - DEFENSE COUNSEL COOPER BY THE COURT

1 EXAMINATION OF DEFENSE COUNSEL COOPER

2 BY THE COURT:

3 Q. MR. COOPER, HAVE YOU EXPLAINED TO YOUR CLIENT THE
4 CHARGES HE IS FACING, THE EVIDENCE THE STATE HAS
5 AGAINST HIM, THE POSSIBLE PENALTY, NOT LESS THAN
6 TEN NOR MORE THEN THIRTY YEARS, AND HIS
7 CONSTITUTIONAL RIGHTS?

8 A. I HAVE, YOUR HONOR.

9 Q. DO YOU BELIEVE HE UNDERSTANDS THOSE MATTERS?

10 A. HE DOES, YOUR HONOR.

11 Q. AND HOW HAS HE ADVISED YOU HE WISHES TO PLEAD?

12 A. GUILTY, YOUR HONOR.

13 Q. DO YOU CONCUR IN HIS DECISION TO PLEAD GUILTY?

14 A. I DO, YOUR HONOR.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

EXAM - JAMES MATTHEWS BY THE COURT

9

1 EXAMINATION OF JAMES MATTHEWS2 BY THE COURT:

3 Q. MR. MATTHEWS, YOUR ATTORNEY TELLS ME HE'S
4 EXPLAINED TO YOU THE CHARGES YOU ARE FACING, THE
5 EVIDENCE THE STATE HAS AGAINST YOU, THE POSSIBLE
6 PENALTY, AND YOUR CONSTITUTIONAL RIGHTS. HE SAYS
7 HE BELIEVES YOU UNDERSTAND ALL OF THOSE MATTERS
8 AND YOU WANT TO PLEAD GUILTY. IS THAT RIGHT?

9 A. YES, SIR.

10 Q. NOW, DID YOU UNDERSTAND YOUR RIGHT TO REMAIN
11 SILENT AND YOUR RIGHT TO HAVE A JURY TRIAL WHEN I
12 EXPLAINED THOSE RIGHTS TO YOU?

13 A. YES, SIR.

14 Q. DO YOU UNDERSTAND THAT IN ORDER TO PLEAD GUILTY
15 YOU HAVE TO GIVE UP BOTH OF THOSE RIGHTS?

16 A. YES, SIR.

17 Q. AND THAT'S WHAT YOU WANT TO DO?

18 A. YES, SIR.

19 Q. YOU DON'T WANT A JURY TRIAL?

20 A. NO, SIR.

21 Q. THE INDICTMENT SAYS THAT IN DORCHESTER COUNTY,
22 BETWEEN JULY THE TWENTY-EIGHTH AND AUGUST THE
23 FIFTH OF TWO THOUSAND AND SIX THAT YOU WILLFULLY
24 AND UNLAWFULLY ENGAGED IN CRIMINAL SEXUAL CONDUCT
25 WITH A MINOR IN THE FIRST DEGREE AND THAT YOU

- 1 COMMITTED A SEXUAL BATTERY WITH
- 2 WHO WAS LESS THAN ELEVEN YEARS OLD. DO YOU
- 3 UNDERSTAND THIS CHARGE?
- 4 A. YES, SIR.
- 5 Q. HOW DO YOU PLEAD TO THIS CHARGE?
- 6 A. GUILTY.
- 7 Q. THE STATE HAS RECOMMENDED A TEN YEAR JAIL
- 8 SENTENCE. OTHER THAN THAT HAS ANYBODY PROMISED
- 9 YOU ANYTHING OR THREATENED YOU TO GET YOU TO
- 10 PLEAD GUILTY?
- 11 A. NO, SIR.
- 12 Q. ARE YOU SATISFIED WITH YOUR ATTORNEY?
- 13 A. YES, SIR.
- 14 Q. DID YOU TELL HIM EVERYTHING ABOUT THE CASE SO HE
- 15 COULD GIVE YOU PROPER ADVICE?
- 16 A. YES, SIR.
- 17 Q. HAS HE FAILED TO DO ANYTHING YOU THINK HE NEEDS
- 18 TO DO TO HELP YOU?
- 19 A. NO, SIR.
- 20 Q. HAVE YOU UNDERSTOOD ALL THE QUESTION THAT I HAVE
- 21 ASKED YOU?
- 22 A. YES, SIR.
- 23 Q. HAVE YOU ANSWERED THEM TRUTHFULLY?
- 24 A. YES, SIR.
- 25 Q. DO YOU UNDERSTAND IF YOU WANTED TO FILE AN APPEAL

EXAM - JAMES MATTHEWS BY THE COURT

1 IN THIS CASE YOU WOULD HAVE TO DO THAT WITHIN TEN
2 DAYS?

3 A. YES, SIR.

4 THE COURT: I'LL ACCEPT THE PLEA,
5 I FIND THERE'S A SUBSTANTIAL FACTUAL BASIS FOR HIS
6 PLEA. HIS DECISION TO PLEAD GUILTY IS FREELY AND
7 VOLUNTARILY MADE, HE'S KNOWINGLY AND INTELLIGENTLY
8 WAIVED HIS RIGHT TO A JURY TRIAL, AND HE'S HAD THE
9 SERVICES OF AN ATTORNEY WITH WHOM HE SAYS HE'S
10 SATISFIED.

11 MR. COOPER: YOUR HONOR, EXCUSE
12 ME, I HATE TO INTERRUPT THE COURT. COULD I HAVE ONE
13 MINUTE WITH MY CLIENT?

14 THE COURT: SURE.

15 (Whereupon, Defense Counsel and
16 defendant confer in private.)

17 MR. COOPER: THANK YOU, YOUR
18 HONOR, WE'RE READY.

19 THE COURT: SOLICITOR.

20 SOLICITOR WILLIAMS: IF IT PLEASE
21 THE COURT, THESE INCIDENCES OCCURRED JULY TWENTY-
22 EIGHTH THROUGH AUGUST FIFTH, TWO THOUSAND AND SIX, AT
23 . . . IN ST. GEORGE IN
24 DORCHESTER COUNTY. THE VICTIM IN THIS CASE IS SIX
25 YEAR OLD " . . . , WHO WAS THE STEP-FATHER OF

1 . . . , SO HE WAS THE, I GUESS YOU WOULD CALL
 2 IT THE STEP-GRANDFATHER OF THE SIX YEAR MINOR CHILD.
 3 HE COMMITTED A SEXUAL BATTERY ON THE VICTIM IN
 4 DORCHESTER COUNTY BY PLACING HIS FINGER INTO HER
 5 VAGINA. THE SIX YEAR OLD FEMALE REPORTED IT TO HER
 6 GRANDMOTHER, WHO IS THE WIFE OF THE DEFENDANT, AND THE
 7 DEFENDANT TOUCHED HER VAGINAL AREA AND PLACED ONE OF
 8 HIS FINGERS INTO HER VAGINA, AND AT THAT POINT THEY
 9 NOTIFIED THE DORCHESTER COUNTY SHERIFF'S OFFICE. HE
 10 WAIVED HIS MIRANDA RIGHTS AND GAVE A WRITTEN STATEMENT
 11 TO DEPUTIES THAT HE HAD TOUCHED HIS GRAND-DAUGHTER AND
 12 MADE HER CRY, BUT HE SAID HE DID NOT TOUCH HER
 13 UNDERNEATH HER CLOTHING. THE VICTIM WENT TO THE
 14 DORCHESTER CHILDREN'S CENTER AND THE THERAPIST THERE
 15 FOUND THE VICTIM'S DISCLOSURE TO BE CREDIBLE. AND AT
 16 SOME POINT, YOUR HONOR, THE VICTIM'S MOTHER IN THIS
 17 CASE WOULD LIKE TO ADDRESS THE COURT.

18 THE COURT: YES, MA'AM, I'LL BE
 19 GLAD TO HEAR FROM HER.

20 YOUR NAME, MA'AM?

21 : MY NAME IS

22

23 THE COURT: ALRIGHT. PLEASE SPEAK
 24 LOUD ENOUGH SO THIS LADY CAN HEAR YOU AND WRITE DOWN
 25 WHAT YOU SAY.

1 FIRST OF ALL I
2 WOULD LIKE TO SAY, THERE IS ACTUALLY NO JAIL TIME THAT
3 CAN BE GIVEN REGARDING THE PAIN THAT ME AND MY CHILD
4 HAS SUFFERED. MY CHILD IS GOING THROUGH EMOTIONAL
5 DISTRESS RIGHT NOW AND SHE IS ACTUALLY, CAN'T SLEEP AT
6 NIGHT OR ANYTHING LIKE THIS. I'D JUST ASK THAT THE
7 COURT DO NOT HAVE ANY MERCY ON THIS INDIVIDUAL. HE IS
8 A MANIPULATOR AND A CHILD MOLESTER.

9 THE COURT: THANK YOU, MA'AM.

10 SOLICITOR WILLIAMS: AND YOUR
11 HONOR, DOES YOUR HONOR WISH TO HEAR HIS RECORD?

12 THE COURT: YES, MA'AM.

13 SOLICITOR WILLIAMS: HE HAS A
14 NINETEEN EIGHTY-SIX CONVICTION FOR MANUFACTURING
15 MARIJUANA, HE GOT FIVE YEARS, SUSPENDED TO TWO YEARS
16 PROBATION, A CARRYING A LOADED FIREARM CONVICTION IN
17 NINETEEN NINETY-FOUR, SENTENCE UNKNOWN. AND THEN, IN
18 NINETEEN NINETY-NINE HE GOT A DISTRIBUTION OF COCAINE
19 CONVICTION, AND HE GOT FIFTEEN YEARS SUSPENDED TO FIVE
20 YEARS, WITH FIVE YEARS PROBATION.

21 THE COURT: ALRIGHT. MR. COOPER?

22 MR. COOPER: THANK YOU, YOUR
23 HONOR. YOUR HONOR, MR. MATTHEWS STANDS BEFORE YOU
24 TODAY TAKING FULL RESPONSIBILITY FOR WHAT HE DID. WE
25 WOULD JUST ASK THE COURT TO TAKE THE RECOMMENDATION OF

1 THE STATE, YOUR HONOR.

2 SENTENCE OF THE COURT

3 THE SENTENCE IS TEN YEARS. CREDIT
4 FOR TIME SERVED.

5 GOOD LUCK TO YOU.

6 MR. COOPER: THANK YOU, YOUR HONOR.

7 SOLICITOR WILLIAMS: THANK YOU, YOUR
8 HONOR.

9

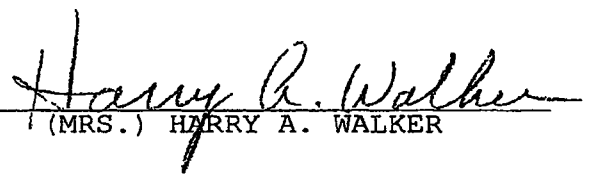
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CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE SEVENTH DAY OF AUGUST, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: FEBRUARY 6, 2008



(MRS.) HARRY A. WALKER

mp ✓

FORM 5

STATE OF SOUTH CAROLINA)
 COUNTY OF Dorchester)
 Full name and prison number (if any) of Applicant)
James Matthews # 258992)
 v.)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

2007 CP-18-2132

APPLICATION FOR
POST-CONVICTION RELIEF

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 Ridgeland Correctional Institution
2. Name and location of Court which imposed sentence Dorchester County Courthouse, 101 Ridge Street
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006 GS 18-1679
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-7-07
 - (b) 10 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. N/A _____

ii. _____

iii. _____

(c) the date of each such result:

i. N/A _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results

i. N/A _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

18 (a)

1.) Dorchester children center in which the physical results was negative, as well the child maltreatment Protocol conducted by the South Carolina Advocacy Medical Response System in which the physical exam was negative. Due to the counsel ineffective assistance the guilty plea was not freely and intelligently and as a result of this the plea was prejudiced.

2.) Due to the counsel failing to render adequate legal assistance, I plead guilty because of the length of the sentence in which I was threaten with.

(a)

1.) did not occur

2.) Counsel failed to present the Forensic Interview Report conducted by the Dorchester Children Center; in which the physical exam results was negative; as well as the Child Maltreatment Protocol conducted by the South Carolina Advocacy Medical Response System in which the physical exam was negative. Due to the counsel ineffective assistance the guilty plea was not freely and intelligently and as a result of this the plea was prejudiced.

Counsel's ~~to~~ to render adequate legal assistance and due to this

- (a) At the time of my guilty plea, my Attorney insisted that I plea, despite the
- (b) fact that he, knew the offense charged in the indictment did not occur.
- (c) Counsel failed to present the Forensic Interview Report conducted by the →

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

- (a) Counsel failed to render adequate legal assistance; and due to this
- (b) At the time of my guilty plea, my Attorney insisted that I plea
- (c) despite the fact that he, knew the offense charged in the indictment →

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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed.
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

Memorandum of LawFACTS

Counsel failed to render adequate legal assistance; and due to this at the time of my guilty plea, my Attorney insisted that I plead, despite the fact that he knew the offense charged in the indictment did not occur.

Counsel failed to present the forensic Interview Report conducted by the Dorchester Children Center; in which the physical exam results was negative; as well as the child maltreatment Protocol conducted by the South Carolina Advocacy Medical Response System in which the physical exam results was negative.

Due to the counsel failing to render adequate legal assistance, I plead guilty because of the length of the sentence in which I was threaten with.

LAW

A guilty plea is open to attack on grounds that counsel did not provide the defendant; with reasonably competent advice; *McMann vs Richardson* 397, U.S. 759, 770-77

Counsel, can deprive a defendant of the right to effective assistance, simply by failing to render adequate legal assistance; *Wyer vs Sullivan* 466 U.S. at 344, 100 S.Ct at 1176

To support an conviction for CSC, there must be evidence of a sexual battery. S.C Code Ann. 16-3-655 (j) (1985). A sexual battery is defined as an intrusion, however slight... into the genital or anal opening's of another person body S.C Code Ann 16-3-651 (h) 1985. ALSO see *State vs Johnson* S.C (1999) 334 S.C 78, 512 S.E 2d 795

Sexual battery; does not mean any battery of a sexual nature, but rather is statutorily defined to include only certain specific acts, which can be loosely described as involving penetration of some sort. *State vs Elliott* (S.C 2001) 346 S.C 603, 552 S.E 2d 727

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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. N/A

ii. _____

iii. _____

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

i. N/A

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) N/A

(b) _____

(c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

- (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. Kenneth G. Cooper; 128 South Main Street;
 - ii. Suite 5, Summerville, South Carolina 29483
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea, and Sentencing
 - ii. _____
 - iii. _____

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

The sentence that was imposed be overturned / The guilty plea withdrawn because it was

20

Are you now under sentence from any other court that ^{not given freely and intelligently} you have not challenged?
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, JM, 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.

James Matthews

SWORN to and subscribed before me this 3rd
day of Nov., 2007

[Signature] (L.S.)
Notary Public

My Commission Expires: 2/5/2017

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

I, JM, 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.

James Matthews
Applicant

SWORN or affirmed to and subscribed before me this
8th day of Nov., 2007.

Donald K. [Signature]
Notary Public

My Commission Expires: 2/5/2017

2007 11 11 11:17

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	
)	
)	2007-CP-18-2132
)	
James Matthews, #258992,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
<hr/>		

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 14, 2007 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the December 2006 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor, First Degree (06-GS-18-1679) . He was represented by Kenneth G. Cooper, Esquire. On August 7, 2007, the Applicant pled guilty to the charge. He was sentenced by the Honorable James C. Williams, Jr., to confinement for a period of ten (10) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded

upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel
2. Involuntary guilty plea.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S.Ct.

366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

LANCE S. BOOZER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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April 9, 2008.

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2006-CP-18-2132

James Matthews, 258992

Applicant.

v.

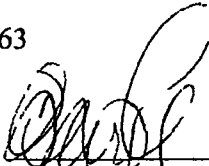
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Tricia A. Blanchette, Esquire, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 10th day of April, 2008, to the below address:

Tricia A. Blanchette, Esquire
P. O. Box 88
Irmo, SC 29063



CAROLYN MURPHY
Paralegal

I N D E X

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5	MR. MCKNIGHT	6		18/22	
6	MR. LEE		16		21/23
7	THE COURT	18			
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
P-1	LETTER		21
P-2	LETTER		21
P-3	MALTREATMENT PROTOCOL DOCUMENT;7 PAGES		36
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P-5	FORENSIC SUMMARY DOCUMENT		41

1 THE COURT: All right. We are now hearing the matter
2 of James Matthews. And Mr. Matthews is present with his
3 attorney Mr. Mark McKnight. And Mr. Lee and Ms. Williams
4 are present on behalf of the Attorney General's Office, on
5 behalf of the State.

6 Are there any preliminary matters from the applicant?

7 MR. MCKNIGHT: None that I'm aware, of Your Honor.

8 THE COURT: Very well. On behalf of the Defense?

9 MR. LEE: Nothing, Your Honor.

10 THE COURT: Mr. McKnight, if you would call your first
11 witness.

12 MR. MCKNIGHT: Your Honor, I would call Mr. Matthews.

13 THE COURT: All right. Thank you, Mr. Matthews. You
14 take your time now. Come on round here. And as best you
15 can when you get there, Mr. Matthews, if you could just
16 raise your hand for me, right hand.

17 JAMES MATTHEWS, having been first
18 duly sworn, testifies as follows:

19 THE COURT: Very well. If you'd please be seated, and
20 when you're seated, state your full name for the record.

21 MR. MATTHEWS: James Matthews.

22 THE COURT: Your witness, Mr. McKnight.

23 MR. MCKNIGHT: Thank you, Your Honor. Your Honor,
24 without -- without belaboring the Court, I believe the
25 Court has some -- has the records ---

1 THE COURT: I do.

2 MR. MCKNIGHT: --- before you.

3 THE COURT: I do. Let me tell you what I've got so
4 you know exactly what I have.

5 MR. MCKNIGHT: All right. Thank you.

6 THE COURT: I've got -- obviously I have the return,
7 and this is just -- just the stat -- return. I've got the
8 application for post conviction relief. And it has
9 attached to it a number of documents.

10 It has -- documents the child's -- it says the
11 childhood -- (as read) "South Carolina Child Advocacy
12 Medical Response System Child Maltreatment Protocol." It
13 has that and it has -- this document is attached.

14 And then it has a document from the Dorchester
15 Children's Center. I also have the sentencing sheet and
16 the docket report sheet. And the indictment and warrant
17 with the affidavit. Then I have the -- the printout from
18 SCDC. I have all that information. Have you got that?

19 MR. MCKNIGHT: And you have a copy ---

20 THE COURT: Do you have ---

21 MR. MCKNIGHT: Yes, I do.

22 THE COURT: Okay.

23 MR. MCKNIGHT: You have a copy of the transcript.

24 THE COURT: And then the transcript.

25 MR. MCKNIGHT: All right.

1 THE COURT: All right.

2 MR. MCKNIGHT: Trying -- I want to make sure we're all
3 reading from the same ---

4 THE COURT: Yep.

5 MR. MCKNIGHT: --- pages.

6 THE COURT: Absolutely, Mr. McKnight.

7 DIRECT EXAMINATION BY MR. MCKNIGHT:

8 Q Mr. Matthews, in this case, initially, who were you
9 represented by?

10 A I remember Ken Cooper.

11 Q Okay. Did -- was Mr. Cooper the first lawyer who
12 represented you in this matter?

13 A He was -- no. I had Gene Dukes represented me, and
14 then he -- he just went through the preliminary case. Then
15 Mr. Ken Cooper was appointed to me.

16 Q All right. Mr. -- you -- you retained Mr. Dukes, but
17 you subsequently ---

18 A Yeah.

19 Q --- discharged him due to his health; is that correct?

20 A Yes, sir.

21 Q All right. Now, when were you notified that Mr.
22 Cooper had been appointed to represent you in this matter?

23 A I think second time I called back to Dorchester. I
24 think about a month, right at about a month.

25 Q After you discharged ---

1 A Right.

2 Q --- Mr. Dukes.

3 A Yes.

4 Q Okay. And did you ever meet with Mr. Cooper?

5 A I met with him one time in, you know, Charleston
6 County.

7 Q Okay. And -- and where in Charleston did you meet
8 with him?

9 A In -- at the Detention Center in the county jail.

10 Q All right. And why were you in the Charleston County
11 Detention Center?

12 A I was in the Charleston County Detention Center
13 because I think Ms. Carmichael been the -- the -- the aunt
14 that -- her grand -- know my granddaughter. So, she
15 shipped me down there.

16 Q Okay. Ms. Carmichael is employed at the ---

17 A She the one ---

18 Q --- Dorchester County jail?

19 A Yes. She ---

20 Q All right. And that was the reason you were sent to
21 Charleston.

22 A I think that's why. I ain't -- they ain't never told
23 me, but I --

24 Q Okay. What did Mr. Cooper discuss with you when you
25 met?

1 A Well, when I met Mr. Cooper, he -- he brings my
2 affidavits and he kind a read cross some of it and tell me
3 that I'm facing 30 years --

4 Q Uh-huh.

5 A -- on this charge. And he told me, said, I ain't had
6 got nothing to go on, and the case been look hopeless. And
7 -- and the doctors and stuff, if I'd a went to trial --
8 could ask for a trial, they -- tell me if I'd a went to
9 trial on it, the doctors and stuff going meet me in the
10 court, and they gonna give me 30 years.

11 Q All right.

12 A He tell me he gonna work with whatever he had.

13 Q Did he discuss with you the substance of any of the
14 statements that had been given?

15 A No.

16 Q Did he discuss with you either the Children's Advocacy
17 Medical Response System of Child Maltreatment Protocol?

18 A No, sir.

19 Q Did he discuss with you the Dorchester Children's
20 Center Forensic Interview Report?

21 A No, sir.

22 Q Okay. Mr. Matthews, can you read?

23 A No.

24 Q If you were given copies of these documents, would you
25 be able to read and ---

1 A I ---

2 Q --- understand them?

3 A I couldn't see one thing on them.

4 Q All right. Did you -- did you tell Mr. Cooper that
5 you could not read?

6 A He know.

7 Q How does he know?

8 A Because I told him that in the courthouse that I -- I
9 couldn't look over it and I can -- I can't understand them.

10 Q All right. Did he ever tell you what evidence it was
11 that the State had against you?

12 A No, sir.

13 Q He just told you that they were going to bring the
14 doctors to trial, and they going to put you away for 30
15 years.

16 A Thirty years. That's the only thing I was getting out
17 of him.

18 Q All right, sir. Did you discuss with him any -- any
19 defenses you thought you might have?

20 A Yeah. I asked him to get in touch with my wife. I
21 asked him to call my sister. I asked him to call some of
22 my people that knowed [phonetic] me, because we have a -- a
23 case like this before. And I don't think he called none of
24 them, because none of them get in touch with me. And every
25 time they'd write, they never would tell me that he called.

1 Q All right. Now, when you said you had a case like
2 this before, did you personally have a case like this
3 before?

4 A No, my brother did.

5 Q All right. And where your brother was -- was accused
6 of ---

7 A Right. Sex --

8 Q --- sexual conduct?

9 A Right.

10 Q All right. Why did you plead guilty?

11 A I plead guilty because I didn't -- I didn't -- after
12 he tell me about the doctors and -- and the stuff was
13 coming to get on trial, and they gonna give me 30 years,
14 and I ain't had no hope on the case or whatever -- because
15 I asked for a jury trial. I asked several times for a jury
16 trial. And they never did -- he never did -- they never
17 did give me one. He never did put any -- the motion of me
18 get going on a jury. I plead guilty on account of 30
19 years.

20 . Because after I had somebody look over the case, after
21 I get in SCDC and start looking over the case, that's when
22 I bring the affidavits back up --

23 Q All right.

24 A -- the post conviction, that -- you know, that you
25 know, ain't nothing that happened that what it said

1 happened.

2 Q All right, sir. Now, the charge that -- that you were
3 brought up on, criminal sexual conduct in the first degree,
4 alleges that you penetrated -- I guess we'd call her your
5 step grandchild's ---

6 A Yes. Right.

7 Q --- private parts.

8 A Right.

9 Q Did you ever penetrate her private parts?

10 A Never did.

11 Q Did you ever fondle her any ---

12 A Never.

13 Q Could you tell the Court exactly what happened on the
14 date in controversy.

15 A Yes. All right. What -- what happened on the day of
16 the controversy, when I went -- I went -- I went -- go into
17 the next room, because I have my clothes in the next room,
18 down to the next room. Going in to get me some more work
19 clothes out of the drawer, because we had some extra room.

20 Q Uh-huh.

21 A And the child room is before I got to my room where
22 I'm going to get my clothes. I -- I saw her on the bed,
23 she been crying. Her grandmama must have been leaving.
24 Her grandmama would have been leaving, going to the church
25 to do some kind of church work.

1 Q All right.

2 A And I asked, I said -- I said, "Minor , what's wrong
3 with you?" Because that's unusual she up that time in the
4 morning.

5 Q Uh-huh.

6 A And ---

7 Q Was this early in the morning?

8 A This been early in the morning.

9 Q Uh-huh.

10 A So, when I went in there and I picked her up and I set
11 her down, and I said -- and then she went -- went to the
12 bathroom.

13 So, I sat down and put on my shoe, because I had my
14 shoe in my hand, my work shoe.

15 Q Uh-huh.

16 A She went to the bathroom.

17 Q Uh-huh.

18 A And then when I come back -- when I come -- when I
19 went out the door to go to the truck to load the truck to
20 do -- go to work --

21 Q Uh-huh.

22 A -- and then my -- grandmama come back up. She come
23 back up and she pick Minor up. She be going to her
24 sister house.

25 Q Uh-huh.

DIRECT EXAMINATION BY MR. MCKNIGHT - JAMES MATTHEWS

13

1 A And then she come back and tell me -- said Minor
2 said I got in the bed with her.

3 Q Okay.

4 A That's what ---

5 Q That you got in the bed with her.

6 A Right.

7 Q All right.

8 A Which I never did enter the bed.

9 Q And -- and your wife is Eartha Matthews?

10 A Eartha Matthews.

11 Q And she is the paternal grandmother ---

12 A Right.

13 Q --- of Minor

14 A Yeah.

15 Q All right. Did you and Ms. Matthews -- did you sleep
16 on a couch?

17 A I ain't never -- no, no. Well, I slept [phonetic]
18 on the couch when Minor sleeping with her grandma. But
19 I ain't never did slept [phonetic] on the couch. I
20 always sleep with my wife.

21 Q All right.

22 A You can ask.

23 Q So, if Minor told the investigators that you -- you
24 slept -- you slept on a couch rather than sleeping with
25 your wife, that would not be true, would it?

1 A No, it's not true.

2 Q Okay. Were you ever asked whether or not you slept on
3 the couch before?

4 A I ain't never -- when I read the thing, that's when I
5 find out. No, they never did ask for that.

6 Q All right. Did you -- did you -- was -- was Minor
7 fully clothed when you picked her up?

8 A She had on her -- her night -- her nightgown.

9 Q Pajamas?

10 MR. LEE: Objection. Relevance, Your Honor.

11 A Yeah. She had on her pajamas, her night -- night
12 clothes.

13 THE COURT: There's an objection; relevance.

14 MR. MCKNIGHT: Yes, Your Honor. This -- this goes to
15 the extent of the investigation by appointed -- by the
16 Public Defender's Office into this matter, into the facts -
17 -

18 THE COURT: Well --

19 MR. MCKNIGHT: -- behind the alleged offense.

20 THE COURT: I understand. But this isn't helping me
21 know whether or not the Public Defender's Office
22 investigated or didn't investigate, I guess. He's just
23 telling me his version of what occurred.

24 And -- and -- and I -- I hear him and I'm going to
25 listen to you, Mr. McKnight, if -- you know, if we're going

DIRECT EXAMINATION BY MR. MCKNIGHT - JAMES MATTHEWS 15

1 someplace, if there's something that should have been done
2 based on this recitation of facts, that wasn't done or
3 whatever.

4 But I gather it's his position that he never had an
5 opportunity to tell the story or not all of it or whatever.

6 MR. MCKNIGHT: That is correct, Your Honor.

7 THE COURT: Okay. So, but -- but the -- the details,
8 unless -- unless, you know, we're going to something that
9 is relevant in terms of there was a pink sweater somewhere
10 or something; there was never any investigation of the pink
11 sweater, something like that, it does seem to be simply a
12 recitation of Mr. Matthews's position. So ...

13 MR. MCKNIGHT: Which is, of course, inconsistent with
14 the plea. Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. MCKNIGHT:

16 Q Did Mr. Cooper ever ask you what happened when you met
17 with him?

18 A No, he -- he never did ask me what happened.

19 Q Didn't you try to tell him what happened?

20 A I told him what happened. I -- I told him, I bet --
21 Well, I said, you can call. He had -- he asked me one
22 thing one time. He said, Did you -- did you ever -- did
23 you ever penetrate the child? And I said I never did
24 penetrate the child. She said -- well, he said, Well, the
25 child say -- he went to her grandmama say she been

1 bleeding.

2 And I said, no, that's not so. I said, she ain't went
3 to her grandmama tell her she been bleeding. So, he asked
4 me that one time.

5 Q All right.

6 A And I asked him to call my grandmama. I said, well,
7 you call her -- her grandmama. She'll tell him.

8 Q All right. Do you know whether or not he did?

9 A I don't know.

10 Q Okay. Now, had it not been for the -- for Mr. Cooper
11 telling you that -- that you had -- you didn't have a
12 chance at trial and that you were looking at 30 years,
13 would you have pled guilty?

14 A No. I would take a jury trial. That's what I wanted.

15 Q All right. Thank you very much.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION BY MR. LEE:

18 Q Just one quick question. When you went into the
19 courtroom that day at trial, did you know that you were
20 going to plead guilty?

21 A When I went into the courtroom?

22 Q Yes.

23 A He would -- already tell me in the back, he said go
24 ahead and plead guilty. And he -- I said, Well, could I
25 talk to the judge? And I think they called it Judge -- the

1 people back in the back used to call him "Candy Licker,"
2 and said I -- might of had a chance.

3 I said, "Could I talk to the judge?"

4 And he said, "Well, maybe you get a chance to talk to
5 the judge."

6 And I said, "Well, if I talk to the judge, probably
7 the judge -- the 10 years you offered me, maybe he give me
8 5 years."

9 And he said, "Well, we'll see about it," and we went
10 on in the courtroom.

11 When I got in the courtroom, and then I said, "Well,
12 any chance I can talk to judge?"

13 He said, "No. You already done take the plea. You
14 can't talk to the judge."

15 So, I ain't never get a chance to say anything.

16 Q So, are you saying that you were forced to plea?

17 A I wouldn't have plead [sic] if I -- if I had know what
18 I know now. I mean, yeah. You know, in a way that 30
19 years forced me.

20 Q But there was no one -- I mean, it was still your
21 decision. No one was forcing you to plead guilty.

22 A No. Well, that 30 years, that's what forced me to
23 plead. Hadn't for that, I wouldn't have plead [sic]
24 guilty.

25 MR. LEE: Nothing further, Your Honor.

1 DIRECT EXAMINATION BY THE COURT:

2 Q You said something earlier, you said they asked you --
3 you said the name of the judge. What was that? You said
4 something and I didn't hear what you said.

5 A They used to call him "Candy Licker" in the jail.

6 Q I understand.

7 A So, I -- I think it's Judge Williams.

8 Q I understand. Okay. Okay.

9 THE COURT REPORTER: Did you say "Candy Licker"?

10 MR. MATTHEWS: Candy Licker. In the jail.

11 THE COURT: Gotcha.

12 MR. MCKNIGHT: Your Honor, if I might, with the
13 Court's indulgence, ask one more question.

14 THE COURT: I don't know, Mr. McKnight. I'm having to
15 struggle with the -- wanting to know if I've got -- what my
16 nickname is in the jail. I think you better go quick.

17 MR. MCKNIGHT: I'm going to go real quick.

18 REDIRECT EXAMINATION BY MR. MCKNIGHT:

19 Q Mr. Matthews, did you ask Mr. Cooper to withdraw your
20 guilty plea?

21 A I sent him a note and asked him -- they -- they tell
22 me I had 10 days to do it in, after I got to the jail. And
23 I sent him a note and asked him could -- after I couldn't
24 talk to the judge about the five years that he said I could
25 have talked to -- I sent him -- I wrote him a letter, tell

REDIRECT EXAMINATION BY MR. MCKNIGHT - JAMES MATTHEWS 19

1 him to please put this in, hoping could he take it in front
2 of the judge where I could get back. Yes.

3 Q Did you also ask him to appeal your conviction?

4 A Yes. I got that wrote down, too.

5 Q All right. Are these -- I'm going --

6 A He got both of them, and he ain't never did it.

7 Q I'm going to show you, Mr. Matthews, two handwritten
8 documents, and ask you if this is your handwriting.

9 A That's not mine. It's a friend of mine that wrote it
10 for me, but that's the writing. That's the ---

11 Q And is that your signature?

12 A That -- that's my signature on the bottom.

13 Q And on ---

14 A Right.

15 Q --- on both of these ---

16 A Both of them.

17 Q --- that's your signature?

18 A That's my signature.

19 Q And did you send these to Mr. Cooper?

20 A I sent them to Mr. Cooper.

21 Q And both of these documents are dated August 12 of
22 2007; is that correct?

23 A Yes.

24 Q And as I recall, your guilty plea was on August 7 of
25 2007?

1 A Yes.

2 Q So, this was within ---

3 A The days ---

4 Q --- five days of the plea?

5 A Yes, sir. Right.

6 Q All right. And now, are these copies of the letters
7 that you sent?

8 A That's just copies. I sent him the other copies.

9 Q All right. Thank you very much.

10 MR. MCKNIGHT: Your Honor, I'd offer these as
11 Plaintiff's Exhibits 1 and 2, in whichever order.

12 THE COURT: Okay.

13 MR. MCKNIGHT: Thank you.

14 Q And to your knowledge, did Mr. Cooper appeal?

15 A No. I ain't never get nothing back from him.

16 Q And did Mr. Cooper ---

17 THE COURT: You gotta to hold on, because we're going
18 to mark the exhibits.

19 MR. MCKNIGHT: Oh, I'm sorry.

20 THE COURT: She's talented, but she can't type with
21 her toes.

22 Q To -- to your knowledge, did Mr. -- did Mr. Cooper
23 appeal your conviction?

24 A I ain't never did see him no more since -- til now.

25 Q Did Mr. Cooper make a motion to withdraw your guilty

1 plea?

2 A No.

3 Q Thank you very much.

4 MR. LEE: A couple of quick questions.

5 THE COURT: Have you seen these (indicates.) Do you
6 have any objections to these coming in?

7 MR. LEE: He just showed them to us. We don't have
8 any objections.

9 THE COURT: Okay. Very well. So, they're in without
10 objection, and you've seen them.

11 MR. LEE: Yes, ma'am.

12 THE COURT: Okay. Absolutely.

13 (Plaintiff's Exhibit No. 1, letter;
14 and Plaintiff's Exhibit No. 2, letter,
15 in without objections.)

16 RE-CROSS EXAMINATION BY MR. LEE:

17 Q So, when did you say that you sent those?

18 A I sent them right after -- right after I got back to
19 the jail and got that guy. About a couple of days after,
20 something like that.

21 Q You don't remember a date?

22 A I couldn't -- it's a date on them.

23 Q Okay. But those seem to be in pencil. They look like
24 they're written in pencil. They look like originals. How
25 did you get them back?

1 A No. I wrote -- there's two copies of them.

2 Q Oh. So, you had your friend write two separate copies

3 ---

4 A Two separate copies of the same thing. Nothing
5 changed.

6 Q Okay.

7 MR. LEE: Nothing further, Your Honor.

8 MR. MCKNIGHT: Your Honor, that ---

9 THE COURT: How did he get them to --

10 MR. MCKNIGHT: Excuse me?

11 THE COURT: I'm a little curious. Again, how -- how
12 did these get to Mr. Cooper, because --

13 MR. MCKNIGHT: I believe he testified that he mailed
14 them to Mr. Cooper.

15 REDIRECT EXAMINATION BY MR. MCKNIGHT:

16 Q Is that correct?

17 A Yeah. I dropped them in an envelope, put the -- put
18 the name and stuff on them. And they told me, say, he'd
19 been coming in, but the officer at the jail said, Don't
20 worry. I -- I can just hand them to him.

21 So, I handed them to the officer. Officer say, I hand
22 them to him when I walk in the courthouse. I got to carry
23 somebody over to the courthouse. That's how he got them.

24 Q All right. Thank you very much.

25 THE COURT: Okay. Does that prompt questions from --

RE-CROSS EXAMINATION BY MR. LEE - JAMES MATTHEWS

23

1 from you? Yes. You had questions? I'm sorry, Mr. Lee.

2 RE-CROSS EXAMINATION BY MR. LEE:

3 Q Oh. Just to clarify, you said you gave them to a
4 guard to mail? You didn't actually put them in the mail
5 yourself?

6 A I didn't drop them in the mail. I give them to a
7 officer that come across there.

8 Q Okay.

9 A And he say he going to take some people across there.

10 Q So, while you might firmly believe that they were
11 sent, you don't actually know for sure that they were ---

12 A No. He told me -- he come back and he told me, he
13 say, Well, I give them to him personally and he tell me he
14 got them. He handed him the envelope.

15 Q So, based on what he told you, you believe that he
16 received them.

17 A Yeah.

18 MR. LEE: I believe that's it.

19 MR. MCKNIGHT: Nothing further of this witness, and
20 that would be the applicant's case.

21 THE COURT: Thank you.

22 MR. MCKNIGHT: Thank you.

23 THE COURT: Thank you.

24 (To Mr. Matthews) You can come on back to Mr.
25 McKnight, to your table --

1 MR. MCKNIGHT: Thank you.

2 THE COURT: -- Mr. Matthews.

3 All right. Mr. Lee, call your first witness.

4 MR. LEE: I'm sorry, Your Honor.

5 THE COURT: You're up.

6 MR. LEE: Oh. We call Mr. Ken Cooper, please, Your
7 Honor.

8 KEN COOPER, having been first duly
9 sworn, testifies as follows:

10 THE COURT: And if you'd please be seated, and state
11 your full name for the record.

12 MR. COOPER: Kenneth Gary Cooper.

13 THE COURT: Your witness.

14 DIRECT EXAMINATION BY MR. LEE:

15 Q Mr. Cooper, how long have you been practicing law?

16 A I got sworn in November the 18th, 1997.

17 Q And do you have experience practicing with criminal
18 law?

19 A I do. I'm death penalty qualified/certified.

20 Q How did you come into contact with -- with the
21 applicant in this case? Were you retained or assigned --
22 appointed?

23 A I was a part-time public defender for Dorchester
24 County. I was assigned Mr. Matthews.

25 Q Did you have occasion to meet with the -- with the

1 applicant before the date of the ---

2 A Yeah. I met with Mr. Matthews several times.

3 Q And during those meetings -- well, first of all, can
4 you -- do you have any idea about how many times you met or
5 perhaps the length of time?

6 A No. It seems like that I met with Mr. Matthews quite
7 a number of times. And I'll tell you why, Mr. Matthews was
8 one of the nicest clients I had. He -- lot -- lot of folks
9 don't treat public defenders very well, so you -- you might
10 want to avoid them. Mr. Matthew is -- is not in that
11 category. I met with him pretty good bit.

12 Q Okay. During those -- those meetings, did you discuss
13 the charges against him?

14 A We went over the charges; we went over -- I went over
15 every single thing with him, every report. And I did give
16 him the -- I did make a copy of the motion to discovery;
17 and I'm quite shocked this morning to find out that Mr.
18 Matthews says he's illiterate. That's the first time I've
19 ever heard that.

20 Q He never told you that he was illiterate?

21 A No.

22 Q Okay.

23 A Unless I'm not recalling correct, or unless I'm making
24 a mistake. This is the first time I've ever heard that.

25 Q Now, I heard you say that you discussed everything,

1 but you discussed the -- by "everything" you mean ...

2 A I -- I discussed all of the evidence against him. We
3 went over it. I discussed the penalty if he were found
4 guilty at trial. I discussed my negotiations with the
5 Solicitor's Office with him. And I believe I did make a
6 call to a family member on that, too.

7 Now, Mr. Matthews -- Mr. Matthews, back -- I'm going
8 too far here. I discussed everything with him, and left
9 him a copy of everything.

10 Q Now, during the course of your discussions with him,
11 did he seem to understand all of this?

12 A Oh, he -- he -- he understood everything to my
13 knowledge, yes.

14 Q Okay. Did he -- did he have the opportunity to
15 provide you with his version of the facts?

16 A He did. He told me all he ever did was pick that girl
17 up. That was his -- that was what he told me happened:
18 "All I ever did was pick that girl up. I didn't do
19 anything else to her."

20 He said, "This girl here -- they've got this confused
21 with my brother."

22 As he testified earlier, his brother had a case
23 similar to this. And he said, "No. This -- this little
24 girl here has got me confused with my brother."

25 You know, and I looked into that and -- so, yeah, he

1 understood.

2 Q So, did his version of the -- the facts that he told
3 you that day, did they coincide with what you heard him say
4 in court this morning?

5 A They were somewhat similar, yeah, that he -- he picked
6 the girl up. Somewhat similar.

7 Q Okay. During those conversations where you advised
8 him of his various rights and -- and counseled him on the
9 evidence, did he present to you -- did he tell -- alert you
10 to the presence of any alibi witnesses or witnesses or
11 potential defenses?

12 A No. I -- I asked him of any witnesses, and he said,
13 "Well, you know, that ain't anybody there but me and that
14 little girl."

15 And I said, "Well, how bout -- you know, how bout a
16 family member?"

17 And he said, "Well, you know, they might testify, they
18 might be angry. They might testify, they might not."

19 I said, "Well, you know, we need -- for a case, we
20 need some witnesses. What -- what can you help me with? I
21 said, Help -- this is your life. Help me with it."

22 And he said, "Well, I don't know."

23 I said, "Okay."

24 Q So, no witnesses, no particular defenses.

25 A No. Well, now -- now I did tell him this: Just

1 because a child tells someone that she was molested, just
2 because a doctor believes the child, that I had won trials
3 in the past with the same kind -- same scenario. But don't
4 count on that, because every jury's different, and I'm just
5 telling you that there is a chance always at trial, 50/50
6 chance, of win or lose.

7 Q Okay. You -- you touched on evidence earlier, but
8 were you provided access to the State's evidence in this
9 case?

10 A Yes, I was.

11 Q Now, do you recall what the -- the thrust of that
12 discovery was?

13 A The thrust of it was that he had molested his -- his
14 grand -- his granddaughter.

15 Q Did you discuss the State's evidence with him?

16 A I did, certainly.

17 Q Based on your conversations with your client and your
18 review of the State's evidence, were you able to form an
19 opinion about the State's ability to prove his guilt beyond
20 a reasonable doubt?

21 A Yeah. I told him that I thought they had a fairly
22 good case. I said -- but -- but I told Mr. Matthews the
23 same thing that I've told, I think, every criminal client
24 that I've ever had. I became a lawyer because I wanted to
25 be a trial lawyer, that I wanted to try cases. And I would

1 certainly "tee this one up" for him. And -- but I said,
2 "But you have to understand, if we lose, there is a great
3 chance that you're going to go to prison for -- could be
4 the rest of your life. And I can't guarantee you anything,
5 even though in the past I've won at least -- I've won cases
6 with similar facts as this, that doesn't mean that the jury
7 that we pick will go that way." I said, "You're looking at
8 a -- a different swing of 20 years."

9 I think that's what I told him, not really positive on
10 the 20 year thing. But -- and it came right down to where
11 -- where Mr. Matthews -- he's the one that told me he
12 didn't want a trial. He didn't want to put the
13 granddaughter through it, and he didn't want to put the
14 people through it. He said, "Let's plead and go."

15 Q Okay. So, if you'll just give me a second. He
16 approached you with the decision to go forward with the
17 plea.

18 A Yes, he did.

19 Q And did you coerce or promise him anything or threaten
20 him or force him in any way to accept this plea?

21 A No. I just said, "You know, sleep on this and make
22 sure it's what you want to do, because once you do that,
23 it's over."

24 Q Now, you alluded earlier to you thought that this
25 could equal a sentence to the rest of his life. Was that

1 because of his -- his age?

2 A Because of his age, and you know, that's a long time
3 in prison.

4 Q So, you had -- did you advise him -- well, I guess
5 what I'm asking is: Did you advise him to take the guilty
6 plea because you felt that was in his best interests?

7 A I did.

8 Q Okay.

9 A I did. Well, when you say "advise," I -- I -- I --
10 let's back up a minute. I -- I don't know if I really
11 advised Mr. Matthews to take a guilty plea.

12 I show them the evidence and I go over it with them;
13 and I let them decide. And if they say, Well, this, that,
14 and the other, I might say, Well, I think that's a good
15 choice, after they've made their decision.

16 Or if they ask me, What do you think? I still don't
17 say I think you ought to plead. I go over it and I say
18 this could happen, this could happen, and this could
19 happen.

20 But as far as advising somebody to plead guilty, we --
21 we -- we've met a long time before I ever do that.

22 Q Okay. Now, did you ever receive the -- the letter
23 that -- that he alluded to that was mentioned a while ago?

24 A No.

25 Q Excuse me one second.

1 MR. LEE: May I have the witness see the --

2 THE COURT: Sure.

3 MR. COOPER: Thank you.

4 THE COURT: Passing to you Exhibits 1 and 2.

5 Q Do you have any recollection of -- well, excuse me.

6 Do you recognize what that appears to be right there?

7 A No. Just looks to be something that's written, I
8 guess, for Mr. James Matthews, since he says that he cannot
9 read and write.

10 (Reads to self) "Hi. This is Mr. Matthews. I would
11 just write you to ask you to file for appeal in my case."

12 No. I never got any of these. I don't know if it's
13 somewhere in the record or something, but I -- I don't even
14 know if Mr. Matthews would have had time to do something
15 like that. Because a lot of times when they sentence you,
16 they're trying to empty the county jail, you're gone that
17 day. So, I don't think -- I don't know if he had -- even
18 time for somebody to do that.

19 Q Okay.

20 A And certainly ---

21 Q But if -- if you had gotten it, would you have -- I
22 mean, within time, would you have withdrawn the guilty
23 plea?

24 A Absolutely. I would have made the motion to that, and
25 I would also simultaneously appealed.

1 Q Now, this -- well, getting to the appeal point, did he
2 request that you file a notice for appeal?

3 A No.

4 Q No. Did you see any grounds in the guilty plea
5 proceeding that might constitute an appealable ground?

6 A No.

7 Q No.

8 A Absolutely not.

9 MR. LEE: If I could just beg the Court's indulgence
10 for one second, Your Honor. I believe that's all from the
11 State, Your Honor. Thank you.

12 THE COURT: All right. Cross-examination, Mr.
13 McKnight.

14 MR. MCKNIGHT: Yes, we have, Your Honor.

15 CROSS-EXAMINATION BY MR. MCKNIGHT:

16 Q Ken, did you -- did you review -- you don't mind if I
17 call you "Ken," do you?

18 A Not at all, Mr. McKnight.

19 Q All right. Did you review the Child Maltreatment
20 Protocol prepared by the Children's Advocacy Medical
21 Response System or the -- and the Dorchester Children's
22 Center Forensic Interview report?

23 A I did.

24 Q All right. And when you reviewed those two documents,
25 did you note any inconsistencies between them?

1 A There was some -- to -- to my recollection now, okay,
2 it's been a while and as a public defender, I have a lot --
3 had a lot of clients.

4 Q Uh-huh.

5 A It seems to me that it might have been a little bit of
6 inconsistencies, but my thought on that was they weren't
7 really inconsistencies that mattered. They were just
8 different points of view, both saying the same thing.

9 Q Now ---

10 A That's how I took that.

11 Q --- did you not receive these reports from my office
12 earlier in the week?

13 A I believe y'all did email them to me, yes.

14 Q All right. And you didn't -- you didn't have the
15 opportunity to review them before your appearance here
16 today?

17 A No.

18 Q All right. Speaking of the inconsistencies that you
19 saw, you say that those were insignificant in your view?

20 A To my recollection.

21 Q Okay. I'll hand you a copy of the Children's Advocacy
22 Medical Response System of Child Maltreatment Protocol.
23 It's one, two, three, four, five, six, seven pages. And
24 ask if you'd take a few moments to review that.

25 A Any particular part you want me to review? Or you

1 find inconsistencies in every page?

2 Q You can read through the notes. I don't know if we
3 can use that -- I don't know -- I know I'm not qualified to
4 make any medical determination.

5 A And I'm not either.

6 Q I believe that I can read the -- read the notes.

7 (Brief pause as the witness reviews the documents.)

8 A All right, Mr. McKnight. I think I'm up to par on
9 this one.

10 Q All right. Do you recall having reviewed that at the
11 time you were representing Mr. Cooper [sic] in connection
12 with this matter?

13 A I'm sure, I did. Yeah.

14 Q All right.

15 MR. MCKNIGHT: Your Honor, I'd offer that as -- I
16 guess it'd be Applicant's Exhibit No. 3.

17 THE COURT: All right. Any objection?

18 MR. LEE: I'd have to say --

19 THE COURT: I think it's already a part of the record.

20 MR. MCKNIGHT: Part of the State's return, Your Honor.

21 THE COURT: Yeah. I was going to say I think it's
22 already -- I'm certainly happy -- let's mark it separately
23 so it's clear what -- what you're referring to. All right.

24 MR. MCKNIGHT: Okay. That -- that's fine.

25 THE COURT: If we only mark it for identification

1 purposes.

2 MR. MCKNIGHT: That would be fine. Also ---

3 THE COURT: And so we're clear, any objection to that,
4 Mr. Lee?

5 MR. LEE: No, Your Honor.

6 THE COURT: Okay. And will you let her do that so --
7 will you let Ms. Kelly do that, Mr. McKnight, so we're
8 clear we know what 3 is?

9 MR. MCKNIGHT: Yes. Yeah. No question about that.
10 That's the ---

11 THE COURT REPORTER: Mark for ID, Your Honor?

12 THE COURT: No. Because then that's not going to be
13 clear.

14 MR. MCKNIGHT: Plaintiff's Exhibit No. 3 would be --

15 THE COURT: I think it's Plaintiff's Exhibit whatever
16 it would be, too. I do.

17 MR. MCKNIGHT: -- would probably be the best way to
18 handle that, Your Honor.

19 THE COURT: And Mr. Lee, do you -- be -- Mr. Lee, do
20 you know what we're marking as Exhibit 3?

21 MR. LEE: Yes.

22 THE COURT: Okay. And any objection to that, marking
23 it as an exhibit? Of course, again, what's -- what's
24 interesting about this is it's part of what I have already
25 reviewed, because it was submitted with -- from the

1 Attorney General to me. So, all right. Thank you.

2 (To the court reporter) Yeah. I'm going to give that
3 back to you, Bonnie, because that's what I've got.

4 THE COURT REPORTER: Yes, ma'am.

5 (Marked Plaintiff's Exhibit No. 3, South Carolina
6 Children's Advocacy Child Maltreatment
7 Protocol document; 7 pages.)

8 CROSS-EXAMINATION BY MR. MCKNIGHT:

9 Q Did you also review the Dorchester Children's Center
10 forensic interview report --

11 A Yes, sir.

12 Q -- to your knowledge?

13 A Yes, sir.

14 Q All right. I'm going to show you this document that,
15 according to the return, consisted of some 5 pages, the
16 last being a summary of statement given by Ericka Footman,
17 the paternal aunt of Minor . Ask if you could take
18 a look at that.

19 (The witness complies.)

20 A I see absolutely no inconsistencies, Mr. McKnight.

21 Q No -- no. I haven't asked you that ---

22 A I'm sorry.

23 Q --- question.

24 A Okay.

25 Q Do you recall having seen this document at -- during

CROSS-EXAMINATION BY MR. MCKNIGHT - KEN COOPER

37

1 the time that you were representing Mr. Matthews?

2 A I do.

3 Q All right.

4 MR. MCKNIGHT: I request that, unless there's an
5 objection, Plaintiff's Exhibit No. 4. Just be the one-page
6 summary of Ericka Footman's statement.

7 MR. LEE: (No audible response.)

8 (Marked Plaintiff's Exhibit No. 4, Summary
9 statement of Ericka Footman; one page.)

10 Q Now, the -- the -- there was no physical evidence of
11 penetration in this case; is that correct?

12 A That's correct.

13 THE COURT REPORTER: Hold on a second, please, sir.

14 MR. MCKNIGHT: Oh, I'm sorry.

15 THE COURT REPORTER: Did you want to see this, Your
16 Honor? (Hands exhibit to the Court.)

17 THE COURT: Okay.

18 (Brief pause as the Court reviews the exhibit.)

19 CROSS-EXAMINATION BY MR. MCKNIGHT:

20 Q There's no physical evidence of penetration in this
21 case; is that correct?

22 A I don't think so. One of them said something about
23 there was some discharge. But if there is -- not a whole
24 lot, no.

25 Q But I believe that the report by the Response Center

1 was that there was no evidence of discharge, either; is that
2 correct? The report ---

3 A Well, there was evidence of discharge right here
4 (indicates.)

5 Q Excuse me?

6 A There's evidence of discharge right here. I'll show
7 you.

8 Q Doesn't that say (as read): "Zero bleeding happened"?

9 A It says "zero bleeding," but this word, d-y-s ---

10 Q Dysoria?

11 A Dysoria.

12 Q If you would read that.

13 A (As read) "Passing water last year."

14 Q Had problems passing water last year.

15 A Uh-huh. Uh-huh.

16 Q But not at or about the time of the incident.

17 A Right.

18 Q And the LTI, I believe it is, also indicated that
19 there had been some problems -- or UTI -- that there had
20 been frequent problems last year.

21 A Uh-huh.

22 Q And if you read down on this very page, page 8 of 12,
23 it -- it says (as read): "Zero bleeding happened," doesn't
24 it?

25 A Absolutely.

1 Q All right. Now, wouldn't it be -- in -- in -- in
2 determining a witness's credibility, isn't it important to
3 know what the witness told all of the people that the
4 witness talked to?

5 A Sure.

6 Q And would a witness's credibility be affected by the
7 fact that, although having spoken to any number of
8 witnesses, a completely different story was given to one
9 person than given to all of the others?

10 A If one story was completely different than the others?

11 Q Yeah. Or had a material difference?

12 A Yeah. That would be something you could hang your hat
13 on. I think so.

14 Q That would be something that would affect your
15 decision whether or not to go to trial.

16 A No. It wouldn't affect my decision to go to trial,
17 because I don't make that decision, okay? Mr. Matthews and
18 everybody else that I ever represented makes that decision,
19 not me.

20 Q Would it affect the advice that you would give to your
21 client?

22 A It probably would, yes.

23 Q All right. Now, I believe all the statements that you
24 read that -- that have come in thus far indicate that --
25 that the child, [REDACTED], said that there had been digital

1 penetration, correct?

2 A No. No. No penetration. She just said, "He touched
3 my privates and it hurt --"

4 Q Okay.

5 A -- she said, "in there." She didn't say anything
6 about digital penetration.

7 Q All right.

8 A But you can prove me wrong again, Mr. McKnight.

9 Q Okay. (As read) "He touched my privates ---"

10 A (As read) "He touched my privates and it hurt." Uh-
11 huh.

12 Q All right. And no evidence of digital penetration in
13 -- in those documents, correct?

14 A Correct.

15 Q Based on your reading.

16 A Correct.

17 Q Are you familiar with the case of *State vs. Iver*
18 *Norman Johnson*?

19 A Probably have seen it in my day, but I can't quote
20 from it, if that's what you're asking me to do.

21 Q Just asking you if you're familiar with it.

22 A Somewhat.

23 Q Do you recall what that case is about?

24 A No. No.

25 Q Simply put, the Court -- the citation is 512 SE 2d

1 795. It's Supreme Court of South Carolina, 1999.

2 And now, from -- from the same Dorchester County DSS
3 report, I want to show you the forensic summary. If -- if
4 -- if you would, I ask you take a few moments to review
5 that. An whether or not you recognize that document.

6 A I recognize the document.

7 Q All right. If you take just a few moments to read it
8 over.

9 (The witness complies.)

10 A All right. I think I'm familiar with it, Mr.
11 McKnight.

12 Q All right. Do you recall having seen that --

13 A I have.

14 Q -- at the time?

15 A Uh-huh.

16 Q I believe this would be Plaintiff's Exhibit No. 5.

17 THE COURT REPORTER: For evidence or ID?

18 MR. MCKNIGHT: Either way is fine with me. Simply
19 put, it's ---

20 THE COURT: Any objections? This is a forensic
21 summary.

22 MR. LEE: No objection, Your Honor.

23 THE COURT: Very well.

24 (Marked Plaintiff's Exhibit No. 5,
25 forensic summary document.)

1 Q Now, safe to say that statements made in that summary
2 are radically different from all of the other statements
3 made by this child, isn't it?

4 A I don't know if I'd use the term "radical," but yeah.
5 She said more in that statement than she had said before.

6 Q And one of the things she says in that statement is
7 that Mr. Matthews put his private in her private.

8 A Yes. She either said that or -- or "on his private."
9 But I don't remember which one. I can refresh my memory.

10 Q (As read) "She demonstrated that James took out his
11 privacy, and placed his privacy in her privacy."

12 A Okay. All right.

13 Q And in the other statements of witnesses, who also
14 talked to this -- this child, no -- no reference to that
15 whatsoever, is there?

16 A No.

17 Q That's a pretty big inconsistency, isn't it?

18 A That is.

19 Q Did you -- did you discuss that with Mr. Matthews?

20 A I don't recall -- I don't recall. I know we went over
21 these things, in that I read them and we talked about them.
22 And then I -- and I told him what each said, and I know I
23 read the summaries to him. But I'm sure that must have
24 come out.

25 Q But you don't have any ---

- 1 A I don't have ---
- 2 Q --- recollection of it.
- 3 A I don't really recall right now.
- 4 Q And until I showed you that, you didn't have any
5 recollection of -- of that allegation having been made, did
6 you?
- 7 A No. No. Not from that far back and that many cases,
8 absolutely not.
- 9 Q All right. But you'd had the opportunity to review
10 those documents before you came here today.
- 11 A I sure did.
- 12 Q Had them in your possession.
- 13 A Had them on my Blackberry; brought them up here.
- 14 Q All right. The other statements -- I believe it's
15 your -- your assessment of the other statements that there
16 was no evidence or no indication of penetration, and that
17 the only thing she said was that he touched her in her
18 private area and it hurt; is that correct?
- 19 A That's correct.
- 20 Q All right. Now, in 1999, you were practicing in the
21 area of criminal law, were you not?
- 22 A I was.
- 23 Q Did you keep abreast of the developments of the law in
24 criminal law at that time?
- 25 A Yes, I did.

1 Q Do you recall -- and I've asked you if you recall
2 *State vs. Johnson*.

3 A No.

4 Q Are you aware that based on the authority in *State vs.*
5 *Johnson*, unless there is evidence of penetration, the mere
6 inappropriate touching, that, quote, "felt bad," is not
7 sufficient evidence of intrusion to support a conviction
8 for criminal sexual conduct with a minor?

9 A Yeah.

10 Q And the documents you read all indicated that there
11 hadn't been any intrusion with the exception of the one ---

12 A With the exception ---

13 Q --- grossly inconsistent statement from everything
14 else she had said.

15 A Well, there were only two. One said ---

16 Q There were three.

17 A Well, there were ---

18 Q You -- you read three different ---

19 A There -- there ---

20 Q --- at least three different accounts.

21 A Yeah. That was different, certainly.

22 Q And none the less, proceeded to have him plead guilty
23 to this offense.

24 A No, I didn't have him plead guilty. He said he didn't
25 want to put his family through this, the little girl

1 through this, and let's plead guilty.

2 Q And even with that -- that inconsistency, you think
3 the State had a very good case? No physical evidence of
4 penetration, with only the child's statement, and the
5 child's statement to various witnesses being substantially
6 inconsistent.

7 A I don't think I've ever said the State has -- had a
8 very -- had a very good case.

9 Q Well, I'm -- I'm quoting directly from your testimony
10 on direct, when you testified -- and I quote -- "I told him
11 that I thought they" -- referring to the State -- "had a
12 very good case."

13 You don't recall having testified ---

14 A Well ---

15 Q --- that on your direct?

16 A --- the way you said it was a little bit different,
17 okay?

18 Q Well, no, sir. I asked you if you thought that the
19 State had a very good case, and you said, no, you didn't
20 tell him that. But you did, in fact, tell him that.

21 MR. MCKNIGHT: Thank you. Nothing further from this
22 witness.

23 THE COURT: All right. Yes, sir. Redirect.

24 MR. LEE: Could I just first get some clarification
25 from the Court if possible?

1 THE COURT: All right.

2 MR. LEE: On which statements -- I guess Mr. McKnight
3 is saying that there was no evidence of digital penetration
4 versus which -- I know that he said the forensic summary
5 had the evidence. But he's saying that the priors did not.
6 I'm not sure exactly at what point he's saying that there
7 was and there wasn't before hand. See what I'm saying.

8 MR. MCKNIGHT: No, sir. I'm not saying -- I'm not
9 saying that one way or another. I asked the witness
10 whether there was any evidence of penetration -- Mr. Cooper
11 -- in the two documents that I showed him first, being the
12 ---

13 MR. LEE: Child Resource ---

14 THE COURT: Gentlemen, hello. Remember me?

15 MR. MCKNIGHT: Oh, I'm sorry.

16 THE COURT: That's okay.

17 MR. MCKNIGHT: I just don't want a misstatement coming
18 into the record, because that was not mine.

19 THE COURT: Mr. Lee, here's what I'm going to ask you
20 to do. That was on cross-examination of this witness, and
21 on cross-examination asking the witness to compare two
22 statements.

23 You just ask your questions. Don't you worry about
24 Mr. McKnight's cross-examination. You just do your -- you
25 just ask your questions.

REDIRECT EXAMINATION BY MR. LEE - KEN COOPER

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1 MR. LEE: Thank you, Your Honor.

2 THE COURT: Uh-huh.

3 REDIRECT EXAMINATION BY MR. LEE:

4 Q Mr. Cooper, did you have an opportunity to review
5 these before the guilty plea?

6 A Sure.

7 Q Did you review these with your client before the
8 guilty plea?

9 A Absolutely.

10 Q So, he was aware of the various statements before
11 deciding to take a guilty plea.

12 A Oh, yeah.

13 Q And thus waiving his objections to it, any
14 inconsistent statements, waiving his objections to any of
15 those.

16 A Right.

17 Q Now, let me ---

18 MR. MCKNIGHT: Your Honor, I'm going to object to
19 that. I -- I don't think -- I don't think we can draw --
20 draw -- draw that conclusion.

21 THE COURT: Are you -- all right. You're objecting to

22 ---

23 MR. MCKNIGHT: I'm objecting to form of his question.

24 THE COURT: Okay. Sustained.

25 MR. MCKNIGHT: And -- and I'm ---

1 THE COURT: Sustained.

2 MR. MCKNIGHT: I'm also objecting to the answer,
3 because I don't think he's qualified to make that
4 statement.

5 THE COURT: Ask him a question.

6 MR. LEE: Beg the Court's indulgence.

7 THE COURT: Okay.

8 REDIRECT EXAMINATION BY MR. LEE:

9 Q Do you still have the copies of the -- the reports
10 that he had you look at?

11 A There's -- there's two here.

12 Q Do you have the South Carolina Children's Advocacy
13 report, the Child Maltreatment Protocol? And then --

14 A I've got a South Carolina Children's Advocacy Medical
15 Response System. It's really kind of hard to read this
16 one.

17 Q Okay. But does it say, "Child Maltreatment Protocol"?

18 A It does.

19 Q Okay. Now, do you see in the notes down there where
20 it says --

21 A Which page you talking about?

22 Q The very first page.

23 A Okay.

24 Q In that box down there where it says -- I'm not sure
25 of that initial (as read): "'A'" something "said he just

1 picked her up. Child states he touched her all over her
2 body, and then he put his finger in her private."

3 A Uh-huh.

4 THE COURT REPORTER: Is that a "yes"?

5 A That's a "yes," I'm sorry. Yeah. I do see that.

6 Q Okay. Now, can you turn with me, please, to page --
7 let's go on to the Dorchester Children's Center forensic
8 interview report, please.

9 A All right. I don't know what -- I don't know if I
10 have that. Forensic summary?

11 Q Forensic summary, yes, sir.

12 A Okay. Maybe I've got that. Okay.

13 Q Can you go down to -- and I know that you already
14 discussed it -- one, two, three, four -- fourth paragraph,
15 the last sentence. Would you read that ---

16 THE COURT: And what exhibit are you referring to, Mr.
17 Lee?

18 MR. LEE: I'm sorry. The forensic summary.

19 THE COURT: All right.

20 MR. LEE: I'm not sure which exhibit ---

21 THE COURT REPORTER: Plaintiff's 5, Your Honor.

22 THE COURT: Yeah.

23 MR. MCKNIGHT: Plaintiff's 5, Your Honor.

24 A Okay. You want me to read the last sentence of one,
25 two, three, four?

1 Q The fourth paragraph down (as read): "She" -- starts
2 with "She demonstrated...".

3 A Okay. (As read) "She demonstrated that James took out
4 his privacy and placed his privacy in her privacy."

5 Q Now, I think you would agree that that is a difference
6 -- indication of penetration than the original. But is it
7 still an indication of penetration?

8 A It is.

9 Q Okay.

10 MR. LEE: Now, I beg the Court's indulgence one
11 second, Your Honor.

12 THE COURT: All right.

13 Q Okay. Now, during the course of your representation,
14 did you -- you did talk with -- did you talk about a trial,
15 the possibility of going to trial?

16 A Oh, absolutely.

17 Q And did you talk about at that trial, he could cross-
18 examine the witnesses against him?

19 A Each and every one of them.

20 Q And did he say at any point that he did not want the
21 jury trial?

22 A Oh, yeah. He told me he didn't want a jury trial; he
23 didn't want to put this little girl through that or his
24 family through that.

25 MR. LEE: I believe that's all the questions I have,

1 Your Honor. Thank you.

2 RE-CROSS EXAMINATION BY MR. MCKNIGHT:

3 Q Ken, how long had you known that you were going to be
4 called as a witness in this case?

5 A I don't remember. Don't recall.

6 Q Would it be safe to say a month or two?

7 A Probably be safe to say.

8 Q Did you -- now, this -- this case was, what? It's
9 about a year and a half ago, right?

10 A Don't recall.

11 Q Now, the guilty plea in the transcript indicates the
12 plea was given on August 7 of 2007.

13 A If you say so.

14 Q And -- well, that's what the transcript says. I
15 wasn't here. I don't know. Any reason to believe that
16 that's not accurate?

17 A No. No.

18 Q And it's now January 7 of 2009.

19 A Yes, sir.

20 Q Roughly 17 months to the day later.

21 A Yes, sir.

22 Q A month less than a year and a half.

23 A Yes, sir.

24 Q All right. And would you have had a file for Mr.
25 Matthews?

1 A That would be at the Public Defender's Office.

2 Q Do you know if a file that recent would still exist?

3 A I would assume it would.

4 Q Did you ever ask the Public Defender's Office if they
5 would provide you with a copy of your file?

6 A No.

7 Q Did you ever go to the Public Defender's Office to
8 look at a copy of your file?

9 A No. Because when I got -- no.

10 Q Okay. So, you can't say what's in that file and
11 what's not in that file, correct?

12 A Correct.

13 Q And you can't say, sitting here today, whether or not
14 Mr. Matthews's letters to you requesting that you withdraw
15 his guilty plea and file an appeal are in that file or not.

16 A I don't have to know if it were in the file or not.
17 If I'd have received them, it'd been done. I don't need to
18 look at a file for that.

19 Q But you don't know if they're there or not --

20 A Don't know.

21 Q -- sitting here today. Thank you.

22 MR. LEE: Nothing further, Your Honor. Thank you.

23 THE COURT: Okay. Thank you, sir. You may come down.

24 Is this witness free to leave?

25 (No audible response.)

1 THE COURT: No objection. You are free to go.

2 MR. MCKNIGHT: No. No, absolutely. No objection.

3 MR. COOPER: Thank you, Your Honor.

4 MR. MCKNIGHT: Having sat in that chair more than once
5 myself, I know he's quite anxious to leave.

6 MR. COOPER: Thank you, Mr. McKnight.

7 THE COURT: All right. Very well.

8 MR. MCKNIGHT: Thank you, Ken.

9 THE COURT: Any additional witnesses, Mr. Lee?

10 MR. LEE: That's all from the State, Your Honor.

11 Thank you.

12 THE COURT: Very well. Is there any reply/rebuttal,
13 Mr. McKnight?

14 MR. MCKNIGHT: Do I have any --

15 THE COURT: They're finished. You got any rebuttal?

16 MR. MCKNIGHT: No. No, Your Honor.

17 THE COURT: Okay.

18 MR. MCKNIGHT: I think Your Honor's heard -- heard the
19 case here. Does Your Honor need any argument or any
20 motions?

21 THE COURT: I think that -- I think I want to -- you
22 know, I -- do I want argument? I want to talk about what I
23 think I've heard, I think is what I want to do, just to
24 help me along.

25 MR. MCKNIGHT: All right.

1 THE COURT: Because I've got some work that I need to
2 do. And I learned this in Judge's School. It's called
3 "reflective listening." It's like this is what I have
4 heard and this is what I have reviewed.

5 First and foremost, I've heard concern on behalf of
6 the applicant Mr. Matthews, that he'd asked Mr. Cooper to
7 file a motion to reconsider sentence or set aside a guilty
8 plea.

9 MR. MCKNIGHT: Uh-huh.

10 THE COURT: And to appeal. And Mr. Cooper, of course,
11 has said that he has no recollection, does not believe he
12 received these two documents. And we don't have the public
13 defender's file here.

14 Additionally, I note that the date of the -- the date
15 of the plea was the 5th of, I guess, August.

16 MR. MCKNIGHT: Seventh, Your Honor.

17 THE COURT: I'm sorry. The 7th of August, with Judge
18 Williams. I'm thinking the number "5" is in my head.
19 There were five days -- there's five days between the --
20 the -- the date of the plea and the date on these letters,
21 which is August 12th.

22 And I note that -- really couple of things. There was
23 some discussion, really from Mr. Matthews, that Mr.
24 Matthews did not remain, he doesn't believe, in the
25 Dorchester County Jail pre-trial, pre-plea, because of the

1 relationship that he and the victim have with -- is it Ms.
2 Carmichael? Mr. Carmichael/Ms. Carmichael in the jail.
3 And that he believe he was in Charleston, and that's why
4 Mr. Cooper saw him in Charleston in the Charleston County
5 Detention Center.

6 I just note that on the 15th of August, that Mr.
7 Matthews is at Leiber, and it says (as read): "New, sent
8 W/O," and then some other letters. And then it indicates
9 that on August the 15th, he is incarcerated at Leiber. But
10 also on August the 15th, he is incarcerated at Kirkland for
11 R & E processing. I note that.

12 And you know, of course, Judge Williams went through
13 the customary inquiry with regards to the plea. And it is
14 -- it is apparent that the -- that the 10 years jail
15 sentence that -- that was a recommendation. So, it wasn't
16 -- it wasn't a straight-up plea. It was certainly a plea
17 to which Mr. Matthews knew that there was going to be a
18 recommendation of 10 years.

19 He testified that since it was going to be a
20 recommendation of 10 years, he was hoping the judge would
21 give him 5. But there's no question but that he was aware
22 that -- that the recommendation was going to be 10 years on
23 this plea.

24 One of the items that I noted -- and -- and then Mr.
25 McKnight, of course, goes through the -- the potentiality

1 of cross-examination and argument regarding inconsistent
2 stories told by -- by the victim. And I note that -- but
3 it wasn't elaborated on particularly -- and that is that
4 Mr. Matthews gave a statement.

5 Of course, I have not seen that statement other than
6 the -- just the simple reference that Mr. Matthews -- and -
7 - and it's described as -- let me -- let me get it. Here
8 it is.

9 It says that (as read): "The defendant, after being
10 advised" -- and let me tell you where I'm looking. Because
11 it's in the affidavit, the warrant's affidavit.

12 It says (as read): "The defendant, after being
13 advised of and willing waiving his Miranda rights, gave a
14 written statement to deputies that he had touched his
15 granddaughter and made her cry. But said that he did not
16 touch her underneath her clothing."

17 That -- that's here. Of course, that -- that's
18 interesting. Mr. Matthews says he does not read and I
19 noticed that when he was testifying, he -- not until cross-
20 examination does he say that someone wrote these two
21 letters for him. What he said in his direct examination
22 was that he did it, that he wrote them -- wrote the -- the
23 two letters. And I just -- I note that, because I made a
24 note as I was going through it, how can he write these
25 letters if he doesn't read. And ---

1 MR. MCKNIGHT: Your Honor, I believe he testified that
2 and then he corrected that, that there was a ---

3 THE COURT: On cross.

4 MR. MCKNIGHT: No. On direct. That he corrected
5 that, that it was his signatures, that a fellow inmate had
6 written the statements.

7 THE COURT: Yeah, yeah. I think you're right, Mr.
8 McKnight. Because I did note that.

9 Then they say here that -- that he gave a written
10 statement. It's -- that whole issue of whether or not he
11 can read is just an interesting -- just an interesting
12 issue.

13 And -- but certainly I don't have the -- his written -
14 - what's referred to in the events as "his written
15 statement."

16 And obviously, Mr. McKnight, I got that there was a
17 concern by Mr. Matthews that we've got these inconsistent
18 stories, and you know, at this point, he is wondering why
19 he's not at trial with those inconsistent stories and the -
20 - and the potentiality of a "not guilty" verdict, no doubt.
21 And -- and has great concerns about that.

22 The position of the State is, you know, the Court asks
23 all these questions; there was no indication of -- of any
24 reluctance on behalf of -- of -- of Mr. Matthews. And he
25 went through the plea and was sentenced.

1 And of course, the State's position, no doubt, is that
2 -- is that Mr. Cooper did not receive either the motion --
3 the letters asking for the -- the plea to be appealed or
4 the motion to withdraw the guilty plea.

5 So, with that -- that's what -- that's what I've
6 heard. And with that, I am delighted to hear your
7 comments.

8 He's looking to you, Mr. McKnight.

9 MR. MCKNIGHT: Well, I guess I'm going to move -- I'm
10 the applicant -- represent the applicant, so I guess that's
11 a good place to look.

12 Your Honor, I -- I would think that -- that the
13 evidence taken as a whole indicates that there was grossly
14 insufficient investigation into this matter. You have a
15 child who has made statements to numerous adults. And in
16 one statement to an adult claims that there was penetration
17 by Mr. Matthews's private. Nowhere else was that in there.
18 Certainly that's a huge discrepancy in what she said.

19 That certainly Mr. Matthews's statement would -- would
20 have been -- that he gave shortly afterwards indicates no
21 unlawful touching whatsoever, that this is a case that
22 should have gone to trial, if not gone ahead -- if not
23 haven't been dismissed under authority of *State vs.*
24 *Johnson*, which was the law in the State of South Carolina
25 at the time that the alleged incident -- or the incident

1 was alleged to have occurred, and at the time of giving the
2 -- giving his guilty plea.

3 And I think, but for -- to meet the "but for test," as
4 -- as Mr. Matthews testified, you know, he was left with
5 the impression that, you know, the State had a great case,
6 by Mr. Cooper, and that he was going to be looking -- he
7 was going to getting 30 years if he went to trial. Whereas
8 an adequate investigation in this matter would have
9 indicated that he had an awfully good shot of getting out
10 on a motion to dismiss under the law as it existed at the
11 time.

12 So, I believe both prongs of the ineffective
13 assistance of counsel test are met in the context of a
14 guilty plea here.

15 That's all I can say. Thank you.

16 THE COURT: And what you would say beyond that, that
17 he hadn't had benefit of an appeal.

18 MR. MCKNIGHT: That is correct, Your Honor.

19 THE COURT: Yeah. It really is a separate ground.
20 Yeah. Because he asked for the appeal and there was no
21 appeal.

22 MR. MCKNIGHT: That -- and that --

23 THE COURT: Uh-huh.

24 MR. MCKNIGHT: -- you know, of course, that can be,
25 you know, a question of who the Court chooses to believe.

1 Certainly, Mr. Matthews -- and I felt Mr. Cooper was very
2 complimentary of Mr. Matthews in his -- his experience with
3 Mr. Matthews ---

4 THE COURT: Uh-huh.

5 MR. MCKNIGHT: --- and reflected by him, he was a very
6 pleasant gentleman to deal with --

7 THE COURT: Uh-huh.

8 MR. MCKNIGHT: -- who's been caught up in an
9 unfortunate series of events.

10 And you know, certainly the failure to appeal would be
11 -- would be ineffective assistance of counsel as a matter
12 of law when -- when requested by his client to notice an
13 appeal of the case.

14 THE COURT: Uh-huh. Mr. McKnight, did you request the
15 public defender's file?

16 MR. MCKNIGHT: No, I did not.

17 THE COURT: Okay.

18 MR. MCKNIGHT: I was not aware of these documents
19 until I received them today from my client.

20 THE COURT: Okay.

21 MR. MCKNIGHT: Thank you.

22 THE COURT: Thank you, Mr. McKnight. I just wanted to
23 be sure that you hadn't requested them and not received ---

24 MR. MCKNIGHT: That's correct.

25 THE COURT: Okay.

1 MR. LEE: A few quick notes, Your Honor.

2 THE COURT: Yeah.

3 MR. LEE: As to the request to appeal, of course, it
4 is the State's position that Mr. Cooper was never requested
5 to file a notice of appeal.

6 As to the request to withdraw the guilty plea, there's
7 no proof that the -- that it was ever delivered. Of
8 course, we don't have the -- the public defender's file.
9 So, there's no proof that it was ever delivered. The
10 alleged guard is not here to testify that he did deliver
11 it. So, there's -- there's really no grounds for that.

12 Also, we know that the applicant did have access to
13 all the statements in terms of Mr. Cooper testified that he
14 did receive them before the plea, reviewed them with his
15 client, and he chose to plead anyway, you know, in light of
16 that.

17 And excuse me one second.

18 THE COURT: Sure.

19 MR. LEE: And Mr. Cooper also testified to even
20 leaving him a copy and that -- even though he claims that
21 he can't read, someone could read them to him if, you know,
22 he had friends that would write his -- his motion to
23 withdraw the guilty plea, someone theoretically would read
24 them to him.

25 PCR isn't a re-trial. You know, we're here to -- to

1 see if he's being held illegally. And you know, our
2 witness, Mr. Cooper, was clear that it was the applicant's
3 own decision to plead guilty and that it was free and
4 voluntary.

5 As for the *Johnson* argument, which I think is -- is
6 what they were focusing on a lot towards the end there, the
7 -- even though he makes an argument about the statements,
8 there is indication of penetration within that evidence.
9 There is -- there is indication of penetration within those
10 statements. And I believe that would have been enough to
11 survive a directed verdict motion; it was enough for the
12 jury to consider it.

13 So, I think that it was properly -- Mr. Cooper
14 performed within the -- you know, the reasonable realms of
15 professional, you know, guidance, I believe. And I think
16 the PCR application should be denied.

17 THE COURT: Thank you. All right.

18 Counsel, I am thinking about ordering that the public
19 defender file be provided. Tell me how you feel about
20 that, about my doing -- how you feel about that, Mr.
21 McKnight?

22 MR. MCKNIGHT: I have no problems with the Court ---

23 THE COURT: Because obviously, these letters ---

24 MR. MCKNIGHT: --- supplementing ---

25 THE COURT: --- you know, if these letters are in the

1 file, that's helpful. If they not -- if they aren't, they
2 aren't. I don't know that your position is -- is any less
3 than it is.

4 MR. MCKNIGHT: I have no problem with the Court
5 supplementing.

6 MR. LEE: Your Honor, I have no problem with that
7 whatsoever, but I do think we will probably need an order -
8 --

9 THE COURT: Yeah. I think so, too.

10 MR. LEE: --- because we would have problems getting
11 that without it.

12 THE COURT: Well, this is what I think I'm going to
13 do, this is what I think is appropriate: I'm going to ask
14 that, Mr. Lee, just do me a little order ordering that.
15 Then once the -- the file is provided, then I want you all
16 to see it first, okay? And have an opportunity -- I want
17 you to have an opportunity to review it.

18 And if we need to have -- I don't want to foreclose
19 your ability to review it and do anything else. I mean, if
20 there -- you see something in that, Mr. McKnight, that you
21 thought perhaps would be here, and Mr. Cooper would have
22 that file and you'd have had benefit of it.

23 And likewise, the Attorney General, I don't want to
24 foreclose you all from saying, Wait a minute, Judge. We
25 need to reconvene because there's something here that's

1 important, that you all may see and I won't see.

2 MR. MCKNIGHT: And if -- if you could or Your Honor
3 could order, although I have no reason to believe that it
4 would happen, that that file not be disturbed.

5 THE COURT: Oh, sure.

6 MR. MCKNIGHT: And -- in order to present ---

7 THE COURT: I just hope we can -- it's sort of famous,
8 in Dorchester County, when in the past, you couldn't get
9 the public defender's files. So, I'm sort of assuming that
10 we're able to get it.

11 And I have no problem just physically it's -- it's --
12 you all tell me how you want me to do it, and they could
13 actually bring it to my office and drop it off there.

14 MR. LEE: I'm okay with that.

15 THE COURT: And -- and just deliver it to my office.
16 And then once we get it, I'll let you guys know and I don't
17 -- if it's -- I don't know that it's extensive, but why
18 don't we do this, why don't we get it and then we'll just -
19 - we'll have a little conference call and then we'll
20 decide.

21 Because if it's 10 pages, I can copy it and send it to
22 you guys. If it's hundreds of pages, then we'll talk about
23 what we're going to do. Okay?

24 MR. LEE: Sounds good. Thank you.

25 THE COURT: All right.

1 MR. MCKNIGHT: Thank you very much, Your Honor.

2 THE COURT: Very well. Thank you all so much.

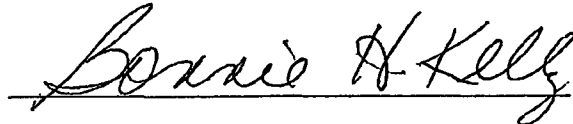
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-- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 7TH DAY OF JANUARY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



BONNIE H. KELLY,
COURT REPORTER

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 29, 2010

sentenced to ten (10) years' confinement. Applicant did not appeal his conviction or sentence.

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to present the forensic interview report conducted by the Dorchester Childrens' Center, in which the physical exam results were negative; as well as the child maltreatment protocol conducted by the South Carolina Advocacy Medical Response System in which the physical exam was negative.
2. Involuntary Guilty Plea
 - a. "Counsel failed to render adequate legal assistance; and due to this at the time of my guilty plea; my attorney insisted that I plead, despite the fact that he knew the offense charged in the indictment did not occur."

At the PCR Hearing, the Applicant orally amended his application to include the following additional claims: (1) Counsel failed to file an appeal as requested; and (2) failure to adequately represent Applicant and prepare case for trial.

APPLICABLE LAW

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove [her] allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813

(1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Involuntary Guilty Plea

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full

understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) *overruled on other grounds by U.S. v. Whitley*, 759 F.2d 327 (4th Cir. 1985). This Court finds that Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

SUMMARY OF TESTIMONY PRESENTED AT THE HEARING

James Matthews

The Applicant testified that he was represented by Ken Cooper, Esquire, who he stated met with him only once prior to the entry of his plea. During that meeting, Applicant testified that he and Counsel discussed affidavits against the Applicant, the fact that he was facing thirty

(30) years, the fact that 'they had nothing to go on,' and that at trial doctors would be called to testify against the Applicant. Applicant asserted that he specifically asked for a jury trial but was told he would be sentenced to thirty (30) years if he proceeded to trial.

Applicant also testified that Counsel did not fully review the discovery in the case with him, specifically alleging that Counsel failed to discuss with him any statements, or any reports conducted by the Childhood Advocacy Center. He also stated that he asked Counsel to call his sister, his brother, and other people close to him as witnesses on his behalf, but that this was not done. He added that Counsel never got his version of the facts of the case, asking only once if the Applicant penetrated the child.

Applicant further testified that he was not guilty of the crime he was indicted for. He asserted that the child was crying one morning, and was thereafter taken by her mother to church. When she returned, he said, her grandmother said the child had told her the Applicant had gotten in bed with her. Applicant went on to testify that he could not read, and that he informed Counsel of this fact. He also stated that he asked Counsel both to withdraw his guilty plea, and to file an appeal on his behalf.

Applicant also introduced various documents into evidence at the PCR Hearing. In support of his testimony that he asked Counsel to file an appeal, he introduced a handwritten note dated August 12, 2007, asking Counsel to file an appeal in the case. Applicant claimed he had a friend write the note and send it for him, as he could not read. In support of his testimony that he sought to withdraw his guilty plea, the Applicant entered another handwritten document, this one a motion also dated August 12, 2007, which he again asserted his friend wrote and sent for him.

Applicant went on to introduce reports from the Children's Advocacy Center, including

the victim's initial interview, the forensic summary take from the interview and subsequent evaluation, and statements made by the victim's relatives. Applicant claimed these documents showed that there was no physical evidence of child abuse.

Ken Cooper

Ken Cooper testified that he was appointed as Applicant's counsel in this matter. He testified that he met with the Applicant on several occasions prior to the guilty plea hearing, and that during those meetings they discussed the charges, the possible penalties for those charges, the Applicant's constitutional rights, and the State's evidence in the case. Counsel added that he left a copy of all of the evidence with the Applicant.

Counsel also testified that the Applicant did give him his version of the facts, which Counsel stated never varied from 'all I did was pick the victim up; she has me confused with my brother.' He testified that he asked for witnesses to corroborate the Applicant's version of events, but that the Applicant provided none. He stated that he did make calls to family members as requested, but added that those calls were not returned.

Counsel went on to testify that he discussed with the Applicant the benefits and drawbacks of proceeding to trial or entering a plea. He stated that when he was reviewing the evidence with the Applicant, he informed the Applicant that he believed the State had a fairly good case against him, but added that he also told the Applicant that he had won cases in similar circumstances before, and that the decision was the Applicant's to make. Counsel further testified that the Applicant was adamant that he did not want a trial because he 'did not want to put his granddaughter through that.'

Counsel further testified that he had no memory of receiving the letters the Applicant

admitted into evidence regarding an appeal or withdrawal of the guilty plea. In fact, he said, he had no memory of receiving any request for appeal or to withdraw the guilty plea at all. He also stated that he reviewed the Childhood Advocacy Center reports with the Applicant, adding that some of the information contained therein was harmful to the Applicant's case. He testified that he would have highlighted the lack of physical evidence of abuse had the Applicant proceeded to trial, but reiterated that it was the Applicant's choice to enter a plea. Finally, Counsel testified that the Applicant never told him he was illiterate.

Public Defender's File

At the close of the PCR Hearing, this Court held the record open in order to gain access to the public defender's file in the case. The purpose of this was to see if the public defender's file contained any documentation to suggest that the Applicant actually sent Counsel the letters he introduced into evidence requesting an appeal and the withdrawal of the guilty plea. This Court has received said file and reviewed it thoroughly. This decision follows

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Involuntary Guilty Plea

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds that Counsel's testimony that he was ready and willing to take

the case to trial but the Applicant decided to enter a guilty plea to be credible, while simultaneously finding that the Applicant's testimony on the subject is not credible.

This Court further finds that the transcript of the guilty plea transcript supports such a ruling. At the plea hearing, Applicant testified that his attorney had explained to him the charges he was facing, the evidence the state had against him, the possible penalty, and his constitutional rights. (Tr. p. 9, lines 3-9). Thereafter, the court also informed the Applicant of his constitutional rights, as well as the fact that he was effectively waiving said rights by entering the guilty plea. (Tr. p. 3, line 22 – p. 5, line 13; p. 9, lines 10-13).

The Applicant testified that while he was taking medication, he was not under the influence or in any way mentally incapacitated such that he would not understand the proceedings. (Tr. p. 7, lines 14-21). The Applicant testified that he did not want a jury trial. (Tr. p. 9, lines 19-20). The Applicant went on to state that, other than the State's recommendation, no one had promised him anything or threatened him in any way in order to secure his guilty plea. (Tr. p. 10, lines 7-11). He also testified that he was satisfied with the services of his attorney, and that his attorney had not failed to do any of the things the Applicant requested of him. (Tr. p. 10, lines 12-19).

Based on the testimony presented at the PCR Hearing, as well as a review of the record before this Court, this Court finds that the Applicant's plea was knowingly, intelligently, freely and voluntarily entered. As such, this allegation is denied and dismissed.

Failure to Present Reports From Children's Center

Applicant alleges that Counsel provided ineffective assistance by failing to present to the court Children's Advocacy Center Reports which showed that there was no physical evidence of

sexual abuse. Counsel testified that he reviewed those documents with the Applicant, and that the documents also had information that was damaging to the Applicant's case. However, Counsel also added that had the Applicant proceeded to trial he would have been prepared to present said reports to the court.

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court first notes that it has had an opportunity to review said documents, and has found that while the documents do show that examiners found that the Applicant's pelvic exam was unremarkable and showed no signs of acute injury or healed/healing trauma, they also noted that such a finding does not discount the victim's claims of sexual abuse. Further, the reports also contain interviewer's notes reflecting that the victim was very detailed in her description of where and how the abuse occurred, as well the statement of the victim's aunt.

Secondly, this Court notes that because the entry of a guilty plea constitutes a waiver of the Applicant's constitutional right to present a defense or evidence on his behalf, the only necessary inquiry is whether or not the guilty plea was entered voluntarily. Because this court has already decided that it was, this Court finds that the Applicant can show neither ineffective assistance of Counsel nor resulting prejudice. Accordingly, this claim is denied and dismissed.

Failure to File Appeal

With respect to this claim, this Court finds that the Applicant has again failed to meet his burden of proof. This Court has looked closely at the dates provided by the Applicant regarding his letter to trial counsel and the contents of that letter. The Applicant pled on August 7, 2007, and wrote a letter dated August 12, 2007 to Counsel asking him to appeal Applicant's guilty plea because his daughter was being 'forced' by the Department of Social Services to testify against

him and his wife would testify for him at a trial. The letter was postmarked August 14, 2007. This is not the date when the letter would have arrived at Counsel's office. Nonetheless, assuming the letter reached Counsel before August 17, 2007, and assuming that as a result the Applicant could prove that Counsel was ineffective for failing to file the appeal, this Court finds that the allegations the Applicant sought to raise appear meritless, so there can be no prejudice. As such, this allegation is denied and dismissed.

Failure to Adequately Represent Applicant and Prepare Case for Trial

With respect to this claim, this Court finds that the Applicant has failed to meet his burden of proof. This Court finds that Counsel's testimony that he met with the Applicant on several occasions, discussed the case, the evidence, and the Applicant's constitutional rights, and that Applicant ultimately made a free and voluntary decision to plead guilty to be credible, as it is supported by the record before this Court. At the same time, this Court finds that the Applicant's testimony on this issue is not credible. As such, this Court finds that Counsel provided Applicant with effective representation. Accordingly, this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App.

1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

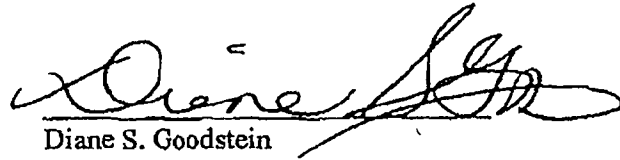
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (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 if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

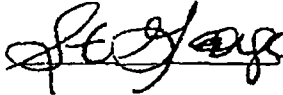
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!



Diane S. Goodstein
Presiding Judge
First Judicial Circuit

7-27, 2010
 South Carolina

FORM 5

STATE OF SOUTH CAROLINA)
County of DORCHESTER)
JAMES MATTHEWS ^{25099Z})
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2011-CP-18-875

v

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (verbally 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 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 RIDGELAND CORRECTIONAL INSTITUTION (RCI) GEORGETOWN, VA, ROOM 23 (GA-23) P.O.
2. Name and location of Court which imposed sentence BOX 2039, RIDGELAND, SC 29936
COURT OF GENERAL SESSIONS FOR DORCHESTER COUNTY,
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 06-65-18-1079, CRIMINAL SEXUAL CONDUCT
 - (b) FIRST DEGREE WITH MINOR

FILED - RECORDED
2011 APR 25 PM 12:28
CHERYL GRAYMAN
CLERK OF COURT
DORCHESTER COUNTY

(c) _____

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

(a) 8-7-07, TEN (10) YEARS

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty GUILTY

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. NA

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. NA

ii. _____

iii. _____

(c) the date of each such result:

i. NA

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NA

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) HE WROTE TIMELY LETTER TO TRIAL COUNSEL REQUESTING APPEAL BUT

(b) COUNSEL DID NOT FILE NOTICE OF APPEAL; JUDGE GAVE NOTICE AT TR, PP. 10-17 10 2

State Ex Rel Condon v. Hodges,
562 S.E.2d 623 (2002)

Padilla v. Kentucky, 130 S.Ct. 1473 (2010)

Eartey v. Murray, 81 CrL 424

451 F.3d 11
79 CrL 405

State v. Picklesimer,
695 SE2d 845 (2010)

(c)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ~~VIOLATES THE SEPARATION OF POWERS CLAUSE; (2) CSP WAS NOT ANNOUNCED BY ORIGINAL DEFENSE COUNSEL~~
- (b) ~~BECAUSE OF THE COLLATERAL CONSEQUENCES OF GUILTY PLEA SO HE RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL~~

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

(1) CSP VIOLATES DUE PROCESS CLAUSE

- (a) The imposition of CSP on applicant violates the separation of powers principle of S.C. and U.S. Constitution (e.g. State Ex Rel Condon v. Hedges, 562 S.E.2d 673 (2002) as CSP is administered and/or given out by S.C. Department of Probation, Parole and Pardon Services (DPPPS).
- (b) Matthew's criminal defense counsel rendered the actual ineffective assistance of yes counsel where counsel failed to advise applicant of the many collateral consequences (i.e. CSP) that he would be subjected there- to by entering the guilty plea; further, coun- sel was ineffective in failing to investigate.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (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. APCR for. Had he been informed of the CSP and etc.; he would not have entered the guilty plea. *Barley v. Murray* 451 F.3d 71 (CA2 2007); 79 CR 405 (2006); Applicant's sentence of CSP is not given by the trial and/or sentencing judge and it violates the due process clause; *State v. Picklesimer*, 695 S.E.2d 845 (2010) *Pacilla v. Kentucky*, 130 S.Ct. 1473 (2010) CSP was simply not part of his plea bargain.

(c) the disposition thereof

- i. DISMISS & OPENED
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 7-27-10
- 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. NA
- ii. _____
- iii. _____

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

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

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

- (a) NOT ANY OF THE GROUNDS SET FORTH IN
- (b) (10) HAVE BEEN PRESENTED IN ANY COURT(S)
- (c) WHICH ARE PREMISED ON THE 2010'S RULE OF LAW (CASES)

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

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

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. Ken Cooper, P.D.
St Georges, SC
 - ii. Mark W. McKnight
154 King Street, 2nd Floor
 - iii. POB 1255
Charleston, SC 29211
- (b) the proceedings at which each such attorney represented you:
 - i. COOPER WAS CRIMINAL DEFENSE COUNSEL;
MR. MCKNIGHT WAS PCR COUNSEL;
 - ii. _____
 - iii. _____

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

NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)

County of JASPER)

VERIFICATION

I, JAMES MATTHEWS 258992, 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.

James Matthews

SWORN to and subscribed before me this 29th day of March 2011.

Paula K. Day (L.S.)
Notary Public

My Commission Expires: 2/5/2017

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

I, JAMES MATTHEWS, 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.

James Matthews
Applicant

SWORN or affirmed to and subscribed before me this

29th day of March, 2011.

Paula K. Aug
Notary Public

My Commission Expires: 2/5/2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	
)	
)	
)	2011-CP-18-00875
James Matthews, 258992,)	
)	
Applicant,)	
)	
v.)	RETURN AND MOTION TO
)	DISMISS
)	
State of South Carolina,)	
)	
Respondent.)	
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In response to the post-conviction relief application filed April 25, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was indicted at the December 2006 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor, First Degree (2006-GS-18-1679). He was represented by Kenneth G. Cooper, Esquire. On August 7, 2007, the Applicant pled guilty to the charge. He was sentenced to by the Honorable James C. Williams, Jr., to imprisonment for a period of ten (10) years. The Applicant did not appeal his guilty plea or sentence.

The Applicant subsequently filed an application for post-conviction relief (PCR) on November 14, 2007 (C.A. No. 2007-CP-18-2132). The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel;
2. Involuntary guilty plea.

The State made its Return on or about April 9, 2008. An evidentiary hearing was convened on January 7, 2009, before the Honorable Diane S. Goodstein. Applicant was present and represented by counsel. Judge Goodstein dismissed the application with prejudice by written order dated June 27, 2010 and filed August 3, 2010. A timely Notice of Appeal was filed. The appeal is currently pending with the South Carolina Supreme Court.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Community Supervision Program [CSP] violates the separation of power(s) clause."
 - a. "The imposition of CSP on applicant violates the separation of power(s) principle of S.C. and U.S. Constitution(s). State Ex Rel Condon v. Hodges, 562 S.E.2d 623 (2002) as CSP is administered and/or given out by S.C. Department of Probation, Parole and Pardon Services (DPPPS)."
2. "CSP was not announced by criminal defense counsel as a collateral consequence of guilty plea so he receive the actual Ineffective Assistance of Counsel."
 - a. "Matthew's criminal defense counsel render the actual ineffective assistance of counsel where counsel failed to advise applicant of the many collateral consequences (i.e. CSP) that he would be subjected thereto by entering the guilty plea; further, counsel was ineffective in failing to investigate the relevant law(s) of the lesser or lesser included offense of that applicant was indicted for. Had he been informed of the CSP and etc., he would not have entered the guilty plea. Earley v. Murray, 451 F.3d 71 (CA2 200), 79 (rL 405 (2006))."
3. "CSP violates Due Process Clause."
 - a. "Applicant's sentence of CSP is not given by the trial and/or sentencing judge and it violates the due process clause, State v. Picklesimer, 695 S.E.2d 845 (2010) Padilla v. Kentucky, 130 S.Ct. 1473 (2010)."
 - b. "CSP was simply not part of his plea bargain."

For the purpose of this Return, the Respondent incorporates the Dorchester County Clerk of Court records, the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

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

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on August 7, 2007. The Applicant was therefore required to file his application on or before August 8, 2008. This Application was filed on April 25, 2011, more than two (2) years beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

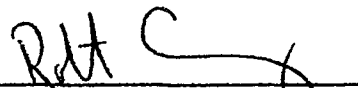
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents


Columbia, South Carolina
August 9, 2011

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	
)	
)	2011-CP-18-00875
)	
JAMES MATTHEWS, 258992,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

James Matthews, #258992
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, SC 29936

DATED this 9th day of August, 2011


 Lauren Meara, Legal Assistant
 For Respondent

first PCR:

1. Ineffective assistance of counsel;
2. Involuntary guilty plea.

The State made its Return on or about April 9, 2008. An evidentiary hearing was convened on January 7, 2009, before the Honorable Diane S. Goodstein. Applicant was present and represented by counsel. Judge Goodstein dismissed the application with prejudice by written order dated June 27, 2010 and filed August 3, 2010. A timely Notice of Appeal was filed. The appeal is currently pending with the South Carolina Supreme Court.

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 - a. "The imposition of CSP on applicant violates the separation of power(s) principle of S.C. and U.S. Constitution(s). State Ex Rel Condon v. Hodges, 562 S.E.2d 623 (2002) as CSP is administered and/or given out by S.C. Department of Probation, Parole and Pardon Services (DPPPS)."
2. "CSP was not announced by criminal defense counsel as a collateral consequence of guilty plea so he receive the actual Ineffective Assistance of Counsel."
 - a. "Matthew's criminal defense counsel render the actual ineffective assistance of counsel where counsel failed to advise applicant of the many collateral consequences (i.e. CSP) that he would be subjected thereto by entering the guilty plea; further, counsel was ineffective in failing to investigate the relevant law(s) of the lesser or lesser included offense of that applicant was indicted for. Had he been informed of the CSP and etc., he would not have entered the guilty plea. Earley v. Murray, 451 F.3d 71 (CA2 200), 79 (rL 405 (2006))."
3. "CSP violates Due Process Clause."
 - a. "Applicant's sentence of CSP is not given by the trial and/or sentencing judge and it violates the due process clause, State v. Picklesimer, 695 S.E.2d 845 (2010) Padilla v. Kentucky, 130 S.Ct. 1473 (2010)."

b. "CSP was simply not part of his plea bargain."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding 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.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be

summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2007). S.C. Code Ann. §17-27-45(a) reads as follows:

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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on August 7, 2007. The Applicant was therefore required to file his application on or before August 8, 2008. This Application was filed on April 25, 2011, more than two (2) years beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of

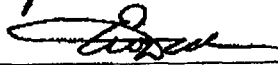


this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

FILED - RECORDS
2011 SEP 26 PM 2:10
CLERK
CLERK OF COURT
DORCHESTER COUNTY

Office of the Attorney General
Attn: Rob D. Corney, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 8th day of Sept., 2011.


EDGAR W. DICKSON
Chief Judge for Administrative Purposes
First Judicial Circuit

Orangeburg, South Carolina



STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 James Matthews, #258992,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-18-0875

FINAL ORDER

2012 MAR -6 PM 2:13
 VERIFIED CUS
 CLERK OF COURTY
 DORCHESTER COUNTY

This matter comes before the Court pursuant to an application for post-conviction relief filed April 25, 2011. In its Return and Motion to Dismiss, Respondent requested that the application be summarily dismissed as successive and as barred by the one-year statute of limitations. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated September 8, 2011, and filed September 26, 2011, provisionally denying and dismissing this action. This Court gave Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated November 8, 2011, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

Applicant responded to the Conditional Order by way of a document captioned "Objections to COD" and dated October 11, 2011. In his response, Applicant argues:

- He "did not intentionally, intelligently, knowingly, and voluntarily waive the right to the criminal direct appeal."

- The community supervision program is “clearly contrary to well established federal law’... As judgment of court establishes a defendant’s sentence which can only be altered by the court if administrative agency changes or modifies sentence; it is wrong, contravening upon separation of power(s) principles.”

This Court has reviewed Applicant's responses to the State's Motion to Dismiss in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why the Conditional Order of Dismissal should not become final. While the one year statute of limitations does not apply to an allegation that Applicant was denied the right to direct appeal due to the ineffective assistance of counsel, he is nonetheless barred from raising the issue in a successive application from raising the claim as it could have been raised in his first PCR application. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008). Applicant’s challenge to the community supervision is not cognizable at PCR. S.C. Code Ann. § 17-27-20 (1976). To the extent that such a claim would be cognizable, Applicant has failed to demonstrate that he could not have raised such a claim in his first PCR application.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court’s Conditional Order of Dismissal and the reason set forth in this order, the application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. Applicant’s attention is directed to Rule 243, SCACR,¹ for the procedures following the filing and service of the notice of appeal.

¹ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

AND IT IS SO ORDERED this 20 day of February, 2012.

Diane S. Goodstein

DIANE S. GOODSTEIN
Chief Judge for Administrative Purposes
First Judicial Circuit Court

Sumner South Carolina.

WITNESSES

Bell, Kris

DCSO

Agency Case #: 06-007601

ARREST WARRANT NUMBER

K177116

Arrested: Sep 06, 2006

ACTION OF GRAND JURY

TRUE BILL

DATE

11/30/06

Foreperson of Grand Jury
Date: November 30, 2006

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006GS18-1679

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

December 11, 2006 TERM

THE STATE

vs.

James Matthews

Indictment for

**CRIMINAL SEXUAL CONDUCT
W/MINOR 1ST DEGREE (V <11)**

SC Code: 16-03-0655(A)(1))

CDR Code: 0385

Class: FEL-A

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

Defendant

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

Defendant

Witness:

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