

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SEP 2 2014

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. Supreme Court

Edgar Dixon, Circuit Court Judge

Case No. 2012-CP-32-1581

Richard Ratliff, #333368

Appellant,

v.

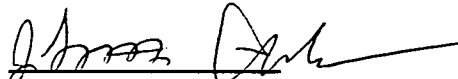
State of South Carolina,

Respondent.

NOTICE OF APPEAL

Richard Ratliff appeals the order of the Honorable Edgar Dixon dated August 18, 2014. Appellant received written notice of entry of this order on August 29, 2014.

September 2, 2014


Jason Scott Chehoski
306 Conner Park Lane
West Columbia, South Carolina 29170
(803) 319-1183
Attorney for Appellant

Other Counsel of Record:
J. Walter Whitmire
Office of The S.C. Attorney General
Post Office Box 11549
Columbia, South Carolina 29201
(803) 734-3374
Attorney for Respondent

September 2, 2014

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SEP 2 2014

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

S.C. Supreme Court

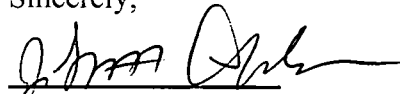
RE: Richard Ratliff, #333368, Appellant v. State of South Carolina,
Respondent, Case No. 2012-CP-32-1581

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal.
- (3) A filing fee of \$100.*

Sincerely,



Jason Scott Chehoski
306 Conner Park Lane
West Columbia, South Carolina 29170
(803) 319-1183
Attorney for Appellant

cc: J. Walter Whitmire
Office of The S.C. Attorney General
Post Office Box 11549
Columbia, South Carolina 29201
(803) 734-3374
Attorney for Respondent

* Under Rule 203(d)(1)(B)(iii) and (d)(2)(B)(iii), SCACR, a filing fee is not required if the appeal is from a criminal case including juvenile delinquency matters, or if the appeal is taken by the State of South Carolina, its departments or agencies. Further, no filing fees are required in post-conviction relief cases. Rule 240(d), SCACR.

RECEIVED

September 2, 2014

SEP 2 2014

The Honorable Beth Carrigg
Clerk of Court for Lexington County
205 East Main Street
Lexington, South Carolina 29072

S.C. Supreme Court

RE: Richard Ratliff, #333368, Appellant v. State of South Carolina,
Respondent, Case No. 2012-CP-32-1581

Dear Ms. Carrigg:

Enclosed for filing is a notice of appeal in the above case.

Sincerely,



Jason Scott Chehoski
306 Conner Park Lane
West Columbia, South Carolina 29170
(803) 319-1183
Attorney for Appellant

cc: J. Walter Whitmire
Office of The S.C. Attorney General
Post Office Box 11549
Columbia, South Carolina 29201
(803) 734-3374
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar Dixon, Circuit Court Judge

Case No. 2012-CP-32-1581

Richard Ratliff #333368,

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v.

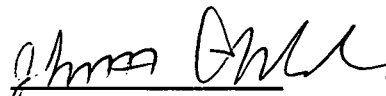
State of South Carolina,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by personally delivering a copy of it to his attorney of record, J. Walter Whitmire, at her office at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, South Carolina 29201, on September 2, 2014.

September 2, 2014



Jason Scott Chehoski
306 Conner Park Lane
West Columbia, SC 29170
(803) 319-1183
Attorney for Appellant

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SEP 2 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Richard D. Ratliff,)
 S.C.D.C. No. 333368,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Case No: 2012-CP-32-1581

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed April 12, 2012. Respondent made its Return on January 4, 2013. An evidentiary hearing into the matter was convened at the Lexington County Courthouse on August 15, 2013. Applicant was present at the hearing and was represented by Jason S. Chehoski, Esq. PCR counsel timely filed an amended Application for Post-Conviction Relief on July 3, 2013. Respondent was represented by Walt Whitmire, Esq., of the South Carolina Attorney General's Office.

At the hearing, Eddie Ratliff, Applicant and counsel testified. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the October 2007 term of General Sessions for three counts of criminal sexual conduct with a minor, second-degree (2007-GS-32-2884; -2885; -2886), two counts of lewd act on a minor (2007-GS-32-2887;

-2888), and three counts of criminal solicitation on a minor (2007-GS-32-2891; -2893; -2894). He was represented by Robert T. Williams, Esq. On February 26, 2009, the State called its case to trial. Applicant was found guilty as indicted. The Honorable R. Knox McMahon sentenced Applicant to twenty (20) years imprisonment on one count of CSC with a minor, second-degree, fifteen (15) years imprisonment on one count of lewd act with a minor, ten (10) years imprisonment on one count of solicitation with a minor, ten (10) years imprisonment on one count of solicitation with a minor. Those sentences were to be served concurrently. Judge McMahon imposed the following sentences to be served consecutively: twenty (20) years imprisonment for one count of CSC with a minor, second-degree, twenty (20) years imprisonment for one count of CSC with a minor, second-degree, fifteen (15) years imprisonment for one count of lewd act on a minor; and ten (10) years imprisonment for one count of solicitation; with a minor. The aggregate term of imprisonment totaled eighty-five (85) years.

A timely Notice of Appeal was filed on Applicant's behalf and perfected by Robert M. Pachak, Esq., of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. State v. Richard David Ratliff, Op. No. 2012-UP-033 (S.C. Ct. App. filed January 25, 2012).²⁰ The Remittitur soon followed. At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to investigate Applicant's case and prepare for trial;
 - b. failure to investigate a possible alibi defense;
 - c. failure to convey the State's plea offer;
 - d. failure to make a motion to quash an allegedly defective indictment before the jury was sworn;
 - e. failure to object to improper character evidence and preserve the issue for appeal;
 - f. failure to object to improper statements during



- the solicitor's closing argument;
- g. failure to make a motion to clarify the trial judge's sentence;

SUMMARY OF TESTIMONY

Applicant alleged counsel was ineffective for failing to adequately convey the State's guilty plea offer and ensure he had the opportunity to accept it. Applicant testified to suffering various medical ailments prior to the trial. He originally was represented by a Public Defender, prior to retaining counsel. Applicant testified he met with counsel two to three times prior to trial. According to Applicant, these consultations were short. Counsel explained the charges and full sentencing exposure to Applicant. Plea negotiations resulted in counsel obtaining a tentative offer to plead Applicant on two lewd act charges and the possible lesser included offense of assault and battery, high and aggravated nature "ABHAN." Applicant claimed his understanding was that he would receive a five year cap. Applicant was well aware of the portion of active time he was looking at along with collateral consequences inherent in the offenses. Applicant met Applicant at Court to enter the plea. However, counsel advised Applicant not to plead guilty that day when the local media showed up at the scheduled plea hearing. Counsel informed Applicant of chamber discussions. As a result, Applicant testified he declined to plead guilty at that juncture. Applicant testified he wrote to counsel on the continued viability of getting a favorable guilty plea offer. (See Applicant's Exh. 1—3). Nothing materialized.

Applicant alleged counsel was ineffective for failing to investigate his case. Applicant testified counsel did not review the witness statements or State's evidence with him. He testified counsel explained to him the underlying procedure of a General Sessions jury trial. Applicant also testified that he explained his close relationship with one of the victim's mothers. He told counsel that the mother had been harassing him for money when he was broke. Applicant



claimed counsel should have cross-examined the particular child victim on her mother's motive. Applicant claimed he wanted counsel to present an alibi case that he was in Virginia in 2007. Applicant asserted counsel should have presented a utility bill and a Virginia Department of Motor Vehicle "D.M.V." report to corroborate his alibi defense. Applicant acknowledged that he was unable to account specific dates he spent in Virginia. Notably, Applicant could not account for the days in which witnesses placed him in South Carolina. Applicant testified he resided in Danville, Virginia, which was four hours away from Columbia.

Applicant alleged counsel was ineffective for failing to make a motion to suppress allegedly inadmissible evidence obtained from the Virginia residence where he resided. In addition, Applicant alleged the personal effects obtained then should not have been presented at trial because they were unfairly prejudicial.

Applicant alleged counsel was ineffective for failing to move to quash certain defective indictments prior to trial. Applicant was aware of the applicable dates of the alleged offenses. Referencing Indictment -2891, Applicant noted the variance of location compared to the particular victim's testimony. Applicant testified he obtained copies of the warrants and indictments after his conviction. He claimed four indictments contained scriveners' errors and asserted counsel should not have waited until the end of his trial to attack the indictments.

Eddie Ratliff, Applicant's brother, testified that sometime between February and March of 2007, Applicant moved back to Virginia and resided at the family home. Eddie testified he lived at the family home and cared for their elderly mother. Eddie specifically recalled Applicant's continued presence in Virginia in March of 2007. He testified Applicant traveled to South Carolina on maybe three occasions in 2007. He also testified Applicant maintained contact with one of the victims and her mother during this time frame. He further recalled one of the

victims and her mother visiting Applicant in Virginia during 2007. Eddie recalled providing a statement in Applicant's case. He also recalled his conversations with the prosecuting solicitor. He testified he was available to testify as a reluctant witness for the prosecution if called upon. Eddie recalled getting information on Applicant's plea negotiations. He testified he wrote Applicant urging him to continue the pursuit of a plea. Eddie testified he was surprised Applicant case went to trial. He was aware of the original plea negotiations, relevant parole eligibility and mandatory sex offender registry.

Counsel testified to his conduct during the course of the representation. The Lexington County Public Defender, Beth Fullwood, Esq., was originally appointed on Applicant's case. At the outset of counsel's representation, he sent all discovery disclosures to Applicant and had Applicant write responses on the documents. Thus, Applicant provided his version of the facts on each arrest warrant and indictment. Counsel maintained his correspondence with Applicant in his file with his notations that he reviewed each letter. Counsel independently reviewed the State's evidence and formulated a trial strategy to attack the credibility of the victims on cross-examination. Counsel testified "I am sure at the [time of trial] I remember inconsistencies, and if I thought [posing certain questions] would help, I would ask." Counsel further articulated he stayed away from questions in subject matter he thought provided no benefit to Applicant's case. Counsel testified he obtained copy of Eddie Ratliff's statement prior to trial. He further acknowledged that he had all the alleged "alibi evidence" presented before this Court. Counsel articulated, "the problem was that we could not put [Applicant] in Virginia, we couldn't 100% say he did not come down to visit." He was unable to present a complete alibi on all the charges. Furthermore, counsel noted that most of Eddie's statement contained hearsay, and further, that



the statement was not beneficial to Applicant's case. Counsel did not want to cross-examine the main victim on her continued contact with Applicant when he moved to Virginia.

Counsel testified to engaging in plea negotiations on behalf of Applicant. The solicitor made a written offer on November 21, 2008, to plead Applicant to three (3) counts of lewd act and three (3) counts of criminal solicitation straight-up. Counsel was able to further better the offer when the solicitor stipulated to *nol prosequere* one of the lewd act charges. However, the solicitor would not make a favorable sentencing recommendation other than that the solicitor recommended concurrent service on the convictions. Applicant steadfastly told counsel that he wanted maximum five (5) year prison sentence. Counsel advised Applicant that he was exposed to at least a fifteen (15) year term of imprisonment. Counsel maneuvered to get a favorable sentencing judge to take Applicant's plea. As a result, a plea hearing was set before Judge Goode. Counsel and the solicitor conducted a chambers conference with Judge Goode on the matter. Counsel testified that he notified Judge Goode that he was only authorized to accept a guilty plea that capped for a five (5) year term of imprisonment. Judge Goode told counsel that he would certainly impose a longer prison sentence if he took Applicant's plea. Counsel testified that the Judge had received recent bad publicity on imposing light sentences. Furthermore, the media was involved in Applicant's case. Applicant declined to enter a plea and the offer terminated. Counsel testified that Applicant often wrote him and dictated they wait for the solicitor's office out until a five (5) year offer was conveyed. Plea negotiations ended and the solicitor called Applicant's case to trial.

Counsel testified the alleged deficient indictments had no effect on his trial preparations. He noted that the syntax and pronoun use in one indictment would have merited an objection.

However, counsel stated that a motion to quash would have only led to the solicitor's re-indictment. The only possible benefit would have been a mere continuance.

Counsel testified he objected to the admission of Applicant's personal effects obtained by police at the Virginia residence on grounds of relevance. He reasoned relevance was his strongest argument for suppression. He noted he did not find the evidence to be inherently prejudicial noting "having adult items for adults is okay. I hope sexual items themselves are not a character issue."

Counsel testified he did not find the solicitor's closing argument warranted an objection. Referencing trauma caused to the victims was reasonable due to the severity of the offenses. Counsel stated that the closing argument by its nature is emotional, and that burden of objecting here and putting a spotlight on the facts would have caused more harm than benefit to Applicant's case.

Counsel filed a timely notice of appeal on Applicant's behalf. He read the Court of Appeals opinion. He could only recall that the Court of Appeals ultimately found the argument presented by appellate counsel to be unpreserved.

APPLICABLE LAW

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, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 668, 104 S.Ct. at 2064. 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, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds counsel's testimony significantly more credible



than Applicant's testimony. This Court finds counsel's laudable reputation as a competent and vigorous advocate is warranted. The Court finds that counsel's investigation of the facts of the case did not fall below professional norms. Counsel's objections and decisions not to object were competent and were a product of reasonable trial strategy. Defense counsel's decision not to file motions to quash indictments, to modify trial court's order, to not present certain evidence, and not to object to certain character evidence were reasonable under the circumstances and did not fall below professional norms of reasonableness. Applicant's conviction was supported by detailed testimony from the alleged victims.

A.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to adequately investigate and prepare his case. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Id., 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir.1987) (emphasis in original). Here, counsel timely spoke with Applicant and obtained his version of the facts on each charge. In addition, counsel conducted a reasonable independent investigation into the State's evidence. This Court finds counsel's testimony compelling that an alibi defense was not appropriate here.

Outside of Applicant's brief relocation to Danville, Virginia in early 2007 extended to the few weeks that followed, there is no evidence that Applicant was confirmed to have remained in Virginia on the specific days and time of the 2007 offenses for which he was convicted. Furthermore, Applicant testified that the commute from Danville, Virginia to Columbia, South Carolina was but a few hours. In comparison to Applicant's vague alibi testimony that is completely lacking in credibility, a local hotel manager provided compelling testimony of Applicant's visits to Lexington County. (Trial Tr. p.306; p.316).. Applicant's claim here hinges on the testimony of his brother; yet the evidence presented to this Court shows Applicant directed counsel, "[Counsel], do not release any information about my case in any way to any member of my family. None of them. Even if I go to prison, I'll let them know when I'm released." (Applicant's Exh. 1). This Court finds counsel made a valid strategic decision not to pursue an unmeritorious defense. See State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, (1980). Regardless, any possible prejudice here was of Applicant's own making. Therefore, this allegation is denied and dismissed.

This Court also finds Applicant failed to prove that counsel was ineffective for failing to adequately cross-examine Victim 1 on her mother's purported motive to have charges fabricated against Applicant and cross-examine Victim's 1 and 2 on the impossibility of the commission of a criminal sexual conduct, second-degree, offense that occurred while Applicant was operating his automobile. Counsel testified he limited his cross-examination to matters he believed benefited Applicant's case. Upon review of the trial transcript, this Court agrees. Counsel vigorously cross-examined Victim 2 and established the defense's theory that Victim 2's purported motive to fabricate based on abandonment. (Trial Tr. p.211). Counsel also questioned Victim 2's mother on the child's desire to visit Applicant in Virginia. (Trial Tr. p.338). Second,



this Court finds Applicant's allegation that counsel should have questioned Victim's 1 and 2 on the impossibility of Applicant operating an automobile while molesting them to be patently absurd. Counsel exercised tremendous dexterity and skill in cross-examining the child victims. (Trial Tr. pp.128-46; pp.207-26; pp.263-72). Counsel was able to render sufficient cross-examinations despite Applicant's requests that counsel "bully" the victims. See (Applicant's Exh. 1-3). Furthermore, Applicant failed to prove how counsel's alleged inadequate cross-examinations here resulted in prejudice. See Huggler v. State, 360 S.C. 627, 635, 602 S.E.2d 753, 757 (2004). Therefore, these allegations are denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for not advising him to accept the solicitor's original plea offer. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler v. Cooper, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012) "In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice." Id. This Court finds counsel's advice on the matter to be competent and credible. Counsel approached plea negotiations governed by Applicant's particular desires in the length of incarceration. Even Applicant's Exhibits 1 through Exhibit 3 clearly corroborated Applicant's underlying posture. Applicant presented no evidence that he would have accepted a plea offer to two (2) lewd act charges and three (3) solicitation charges straight-up without the underlying assurances in sentencing. Counsel honored Applicant's desires in declining to plead him in front of Judge Goode. This Court finds Applicant made an intelligent and voluntary decision supported by counsel's proficient advice on the matter. Applicant failed to produce any evidence

that the solicitor made subsequent plea offers that were not communicated to him. Applicant has no constitutional right to a plea bargain. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to timely object to defective indictments. “The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17-19-90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.” State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (internal citations and quotations omitted). This Court agrees with the trial judge that minor discrepancies on the Old Code sections listed in the several of the indictments to be absolutely no significance. (Trial Tr. p.373). Applicant’s testimony regarding his understanding of plea negotiations before this Court shows he was adequately apprised of all the offenses for which he was charged. The variance was the innocent product of recent legislative change in labeling subsections. However, in denying Applicant’s allegation regarding Applicant’s failure to object to a deficiency in Indictment 2007-GS-32-2888 “lewd act” this Court places great weight upon counsel’s testimony. In the body of this particular indictment, the wrong victim was named in the opening sentence. Yet, the relevant information that supported the charge correctly referred to the correct victim. It read in relevant part, “to wit, the defendant did rub the breasts and vagina of Victim 3, age 13, in violation of 16-15-140.” (Trial Tr. p.24). The discrepancy was brought to the

trial judge's attention by the solicitor. Despite counsel's strategic decision to argue for dismissal based on a failure of notice, counsel candidly testified before this Court that the defects in the indictments had no effect on counsel's ability to present an effective defense at trial. (App.p.375). Furthermore, the record shows the solicitor and counsel regularly communicated prior to trial. Simply, Applicant presented no credible evidence to show that all relevant parties misunderstood the Indictment despite its flaws. Furthermore, this Court finds Applicant presented no credible evidence to show how counsel's alleged deficiency prejudiced him. Therefore these allegations are denied and dismissed.

D.

This Court finds Applicant failed to prove counsel was ineffective for not objecting to the admission of Applicant's personal effects obtained by police based upon Rule 403, SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Counsel testified he did not believe the evidence at issue was unduly prejudicial. This Court agrees and finds the evidence at issue corroborated the victims' stories and went directly to supporting their credibility. The personal effects here were highly relevant to and probative of Applicant's guilt, especially as they related to the solicitation charges. See Rule 401, SCRE. The victims were able to identify and describe the sex toys, photographs and the DVD as items Applicant used in either his grooming of the victims or his direct solicitation for sexual activities with them. The evidence at issue formed a distinct part of the *res gestae* of the offenses Applicant was charged of committing. This Court notes the trial judge found the evidence in this case to be substantially more probative than prejudicial. (Trial Tr. p.425). Appellate counsel's performance here was reasonable. This Court declines to find deficiency where it agrees with counsel that evidence in question did not merit



an objection. The Record shows the evidence was clearly admissible. Therefore, this allegation is denied and dismissed.

E.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to object to the solicitor's alleged improper closing argument. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id., at 609-10, 602 S.E.2d at 744. "While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done." State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). Here, this Court finds the solicitor's comments were reasonable inferences from the trial. Sexual abuse leads to continued and prolonged harm. Furthermore, this Court finds counsel offered valid trial strategy on not objecting to draw further attention to fact that sexual abuse of children leaves lasting scars on the victims in this particular case. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) ("Where counsel articulates a strategy, it is measured under an objective standard of reasonableness."). This Court takes into account the plethora of counsel's trial experience here. Therefore this allegation is denied and dismissed.

F.

Applicant alleges counsel was ineffective for failing to object to the trial judge's variance from the oral pronouncement to the sentencing sheet. This Court disagrees "Although this Court has not previously spoken on the issue of whether an oral pronouncement of a sentence controls over a conflicting written sentencing order, the majority of jurisdictions that have considered this

point hold the oral pronouncement controls.” Boan v. State, 388 S.C. 272, 276, 695 S.E.2d 850, 852 (2010). This Court finds the oral pronouncement comported with the sentence.

G.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. 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 issues 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 forgoing, 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 for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18th day of August, 2014.



EDGAR W. DICKSON
Presiding Judge
Eleventh Judicial Circuit

Orangeburg, South Carolina

